policy and to direct the Secretary of Health, Education, and Welfare to initiate a comprehensive study on the formulation of a plan to implement such policy; to the Committee on Education and Labor.

H.R. 17006. A bill to establish an independent agency to be known as the U.S. Office of Utility Consumers' Counsel to represent the interests of the Federal Government and the consumers of the Nation before Federal and State regulatory agencies with respect to matters pertaining to certain electric, gas, telephone, and telegraph utilities, to amend section 201 of the Federal Property and Administrative Services Act pertaining to proceedings before Federal and State regulatory agencies, to provide grants and other Federal assistance to State and local governments for the establishment and operation of utility consumers' counsels, to provide Federal grants to universities and other nonprofit organizations for the study and collection of information relating to utility consumer matters, to improve methods for obtaining and disseminating information with respect to the operations of utility companies of interest to the Federal Government and other consumers and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mrs. MAY:

H.R. 17007. A bill to make certain reclamation project expenses nonreimbursable; to the Committee on Interior and Insular Affairs.

By Mr. MOORE:

H.R. 17008. A bill to encourage the growth of international trade on a fair and equitable basis; to the Committee on Ways and Means.

By Mr. O'KONSKI:

H.R. 17009. A bill to amend title II of the Social Security Act to provide a minimum primary benefit of $100 a month (with corresponding increases in the benefits payable to certain uninsured or insufficiently insured individuals); to the Committee on Ways and Means.

By Mr. RANDALL:

H.R. 17010. A bill to amend title 39, United States Code, to provide for door delivery mail service for certain city delivery service areas without door delivery service inhabited by senior citizens, and for other purposes; to the Committee on Post Office and Civil Service.

By Mr. RUPPE (for himself, Mr. McDONALD of Michigan, Mr. ESCH, and VANDER JAGT):

H.R. 17011. A bill to designate certain lands in the Seney, Huron Islands, and Michigan Islands National Wildlife Refuges in Michigan as wilderness; to the Committee on Interior and Insular Affairs.

By Mr. DANIELS:

H.J. Res. 1258. Joint resolution authorizing the President to proclaim the third Sunday in May of each year as Grandmother and Grandfather's Day; to the Committee on the Judiciary.

By Mr. RESNICK:

H.J. Res. 1259. Joint resolution to authorize the temporary funding of the emergency credit revolving fund; to the Committee on Agriculture.

By Mr. EVERETT (for himself and Mr. KUYKENDALL):

H. Res. 1154. Resolution expressing the sense of the House with respect to the use of certain Government property; to the Committee on Public Works.

By Mr. PODELL:

H. Res. 1155. Resolution to establish a select committee of the House of Representatives to study the unmet needs of the people of the United States for food, clothing, and other necessities of life, and to recommend appropriate programs to insure every resident of the United States adequate food, clothing, and other basic necessities of life; to the Committee on Rules.

By Mr. RESNICK:

H. Res. 1156. Resolution expressing the sense of Congress that medical doctors serving in rural areas should be provided with an appropriate exemption from military service; to the Committee on Armed Services.

By Mr. ROSENTHAL:

H. Res. 1157. Resolution commemorating the 20th anniversary of the State of Israel; to the Committee on Foreign Affairs.

By Mr. WATSON:

H. Res. 1158. Resolution expressing the sense of the House with respect to the use of certain Government property; to the Committee on Public Works.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. DIGGS:

H.R. 17012. A bill for the relief of Engracia Dulce de Bejuco; to the Committee on the Judiciary.

By Mr. HAWKINS:

H.R. 17013. A bill for the relief of Byung Ai Cho; to the Committee on the Judiciary.

By Mr. MATHIAS of Maryland:

H.R. 17014. A bill for the relief of Rev. Dr. Christopher Stephen Mann; to the Committee on the Judiciary.

By Mr. PEPPER:

H.R. 17015. A bill for the relief of Dr. Arthur Gosselin; to the Committee on the Judiciary.

By Mr. PUCINSKI:

H.R. 17016. A bill for the relief of Mr. Panagiotis Leontaritis; to the Committee on the Judiciary.

By Mr. REINECKE:

H.R. 17017. A bill for the relief of Hong Jin Chun (also known as David Chun) and his wife, Bok Lae Sue Chun; to the Committee on the Judiciary.

By Mr. RESNICK:

H.R. 17018. A bill for the relief of Dr. Ok Soon Kim; to the Committee on the Judiciary.

By Mr. RHODES of Pennsylvania:

H.R. 17019. A bill for the relief of Salvatore Calafiore, his wife, Aida Calafiore, and their sons, Giuseppe Calafiore and Salvatore Calafiore; to the Committee on the Judiciary.

H.R. 17020. A bill for the releif of Maria Teresa Vega; to the Committee on the Judiciary.

By Mr. RYAN:

H.R. 17021. A bill for the relief of Eduardo Bolivar Batista-Good, his wife, Luisa Lopez de Batista, and their children, Emily Hernandez Batista and Lorenzo A. Hernandez Batista; to the Committee on the Judiciary.

By Mr. STRATTON:

H.R. 17022. A bill for the relief of Pvt. Willy R. Michalik, RA15924409; to the Committee on the Judiciary.

PETITIONS, ETC.

Under clause 1 of rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

303. By Mr. COLLIER: Petition of James M. Berry, Doylestown, Pa., and others, relative to aid and comfort to our enemies; to the Committee on Foreign Affairs.

304. By the SPEAKER: Petition of James Williams, Minneapolis, Minn., and others, relative to the impeachment of the President; to the Committee on the Judiciary.

305. Also, petition of James Williams, Minneapolis, Minn., and others, relative to the impeachment of the Vice President; to the Committee on the Judiciary.

SENATE—*Thursday, May 2, 1968*

The Senate met at 12 o'clock noon, and was called to order by Hon. SPESSARD L. HOLLAND, a Senator from the State of Florida.

Rabbi Morris A. Landes, Congregation Adath Jeshurun, Pittsburgh, Pa., offered the following prayer:

Our God and God of our fathers, we are thankful for the dream which is these United States of America, one Nation unified in spirit and in purpose, conceived in liberty and dedicated to the proposition that all men are created equal and are endowed with God-given rights of life, liberty, and the pursuit of happiness without regard to race, color, creed, or place of national origin. Grant us the wisdom and the understanding to make that dream a reality for all the inhabitants of our oceanbound borders. May concord and harmony exist within our Nation, and may we exert our tremendous spiritual and material assets for the well-being of all our citizens and for the improvement of the lot of all mankind.

On this day, the 20th anniversary of the State of Israel, we are thankful as well for an ancient prophecy come true, whereby the people of the Bible have returned to the land of the Bible there to found once again a nation promised by Biblical Writ.

We are grateful that the dream and the prophecy have joined together in the sympathetic support manifested by our great Nation to the concept of a reborn State of Israel during the decades when that State was aborning, and in the brotherly friendship that has prevailed in the two decades of Israel's existence between our own glorious and established democracy and the young democratic bastion in the Near East which is the State of Israel.

O, Thou whose name is "Peace," spread Thy canopy of peace over a troubled and groping humanity. Amen.

DESIGNATION OF ACTING PRESIDENT PRO TEMPORE

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., May 2, 1968.

To the Senate:

Being temporarily absent from the Senate, I appoint Hon. SPESSARD L. HOLLAND, a Senator from the State of Florida, to perform the duties of the Chair during my absence.

CARL HAYDEN,
President pro tempore.

Mr. HOLLAND thereupon took the chair as Acting President pro tempore.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Wednesday, May 1, 1968, be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Hackney, one of its reading clerks, announced that the House had passed, without amendment, the bill (S. 2745) to provide for the observance of the centennial of the signing of the 1868 Treaty of Peace between the Navajo Indian Tribe and the United States.

The message also announced that the House had passed a bill (H.R. 16913) making appropriations for the Department of Agriculture and related agencies for the fiscal year ending June 30, 1969, and for other purposes, in which it requested the concurrence of the Senate.

The message further announced that the House had agreed to the concurrent resolution (H. Con. Res. 615) extending the congratulations of the Congress to the College of William and Mary on its 275th anniversary, in which it requested the concurrence of the Senate.

ENROLLED BILLS SIGNED

The message also announced that the Speaker had affixed his signature to the following enrolled bills:

H.R. 10477. An act to amend chapter 37 of title 38 of the United States Code with respect to the veterans' home loan program, to amend the National Housing Act with respect to interest rates on insured mortgages, and for other purposes;

H.R. 11527. An act to direct the Secretary of Agriculture to release on behalf of the United States conditions in a deed conveying certain lands to the University of Maine and to provide for conveyance of certain interests in such lands so as to permit such university, subject to certain conditions, to sell, lease, or otherwise dispose of such lands; and

H.R. 13176. An act to amend the acts of February 1, 1826, and February 20, 1833, to authorize the State of Ohio to use the proceeds from the sale of certain lands for educational purposes.

HOUSE BILL REFERRED

The bill (H.R. 16913) making appropriation for the Department of Agriculture and related agencies for the fiscal year ending June 30, 1969, and for other purposes, was read twice by its title and referred to the Committee on Appropriations.

HOUSE CONCURRENT RESOLUTION REFERRED

The concurrent resolution (H. Con. Res. 615) extending the congratulations of the Congress to the College of William and Mary on its 275th anniversary, was referred to the Committee on the Judiciary.

LIMITATION ON STATEMENTS DURING TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that statements in relation to the transaction of routine morning business be limited to 3 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

THE 20TH ANNIVERSARY OF THE ESTABLISHMENT OF ISRAEL

Mr. DIRKSEN. Mr. President, I send to the desk a resolution, for myself and the distinguished majority leader, and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The resolution will be read.

The legislative clerk read the resolution (S. Res. 284), as follows:

Whereas the people of the United States, speaking through the President and the Congress, favored restoration of an independent Jewish nation in Palestine; and

Whereas resolutions expressing support for that objective were adopted by the Sixty-seventh, Sixty-ninth, Seventy-ninth, Eighty-first, and Eighty-fifth Congresses; and

Whereas the State of Israel was established on the fifth of Iyar, 5708, twenty years ago today, according to the Hebrew calendar; and

Whereas during these twenty years Israel has defended her right to exist, developed her economy, given sanctuary to more than one million two hundred and fifty thousand refugees and immigrants, cultivated the arts and sciences, and established and strengthened democratic institutions, serving the cause of freedom and human advancement; and

Whereas, regrettably, a peace settlement between Israel and her Arab neighbors has not yet been achieved: Now, therefore, be it

Resolved, That the Senate of the United States extends its congratulations to the people of Israel on this anniversary and best wishes for continued progress and expresses the hope that the nations of the Near East may soon meet, as neighbors, in negotiations which will lead to peace, economic and cultural cooperation, and which will bring stability and progress to the Near East to the benefit of all the peoples of the region.

The ACTING PRESIDENT pro tempore. Is there objection to the present consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. DIRKSEN. Mr. President, over the years, I have personally seen the transformation of what looked like a piece of desert in the Middle East into a thing of green and beauty, where happy people today reside in their homeland.

This is the 20th anniversary of the beginning of the Republic of Israel, and I ask for the adoption of the resolution.

Mr. President, I ask unanimous consent that the names of the Senator from California [Mr. KUCHEL], the Senator from New York [Mr. JAVITS], and the Senator from Michigan [Mr. GRIFFIN] be added as cosponsors.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. DIRKSEN. Mr. President, although it is a departure from my usual rule, I ask unanimous consent that the resolution lie at the desk until the conclusion of today's session, for additional cosponsors.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. PASTORE. Mr. President, will the Senator yield?

Mr. DIRKSEN. I yield the floor.

Mr. PASTORE. Mr. President, I ask unanimous consent that my name be added as a cosponsor of the resolution.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. PASTORE. Mr. President, observance of the 20th anniversary of the founding of the State of Israel kindles warm personal and official memories of 1948. As the then Governor of the State of Rhode Island, I shared the enthusiasm not only of my Jewish neighbors but also of all the people of Rhode Island over the birth of free Israel.

Christian Rhode Island points with pride to the patriotism and good citizenship of Rhode Island Jewry proved over 200 years. A bright page of our history is Newport's Touro Synagogue—two centuries old—now a national shrine, and the loveliest monument to early American Jewry.

This is but an incident of Rhode Island history accented by hospitals and civic centers as well as synagogues, temples, and an entire catalog of community accomplishments revered by all Rhode Island as the Jewish recognition and expression of charity as justice—individual obligation and personal piety translated generously into universal well-being.

No wonder Rhode Island rejoices in 1968 at the 20th anniversary of an event they celebrated in 1948.

Twenty years ago we were witnesses of history in the making. It was the dream of the promised land of centuries—the hope of the returning, the will toward rebirth of a people—all worked against the pattern of a world that then and even today seems bent on self-destruction.

It was the promised land of broken promises—a returning with the detours of internment hells—a rebirth fashioned out of the death of millions and millions for no crime other than that of their race.

We saw the mass movements, and the secret movements, and the stealthy movements of a hunted people across the fact of a continent, and into the hearts of the world.

We saw a land grow from 85,000 people at the beginning of World War I to 600,000 at the close of World War II.

We saw dead cities come to life and dead soil spring to fruitfulness with the tears and blood and sweat of Jewish pioneers. We saw fears give way to hope as faith became fact, and dispersion gave way to destiny.

The State of Israel took its place among the nations. We have never doubted its courage. We have never doubted its convictions. We can never doubt its common cause with the ideals of Western freedom.

The history of these 20 years has justified every confidence in the character, courage, and capability of a dedicated people to restore the ancient Jewish commonwealth that had existed from time immemorial.

The spirit of Israel has made the

desert to bloom and to the material beauty they have added a spiritual dignity with a sense of destiny to assure mankind that a nation that wills to be free cannot be denied or defeated.

Mr. RIBICOFF. Mr. President, the 20th anniversary of Israel's independence is a time for great joy. During my recent trip to Israel, I marveled once again at this noble experiment in statehood which already has so many remarkable achievements to its credit. For with blooming deserts—with barriers now removed and the Mandelbaum Gate border crossing no more than an unpleasant memory—there is undaunted spirit and a future of hope and promise.

Yet, this 20th anniversary is also a time of sad thoughtfulness. For the remarkable Israelis fought a victorious war to bring peace. And still there is no permanent peace. Instead, hostilities break the unsteady calm of a ceasefire. It is our solemn hope that finally a just settlement and a lasting peace will come to the Middle East.

Mr. President, the State of Israel teaches us of human courage, strength of will, vitality and self-sacrifice. This commitment to meaningful values promise centuries of anniversaries ahead.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the resolution.

The resolution (S. Res. 284) was agreed to.

The preamble was agreed to.

Mr. JAVITS. Mr. President, I address myself to the resolution, so eloquently worded, to commemorate the 20th anniversary of the establishment of the State of Israel, as introduced for himself by the minority leader, for the majority leader, for the Senator from Rhode Island [Mr. PASTORE], and to which he has added my name.

Mr. President, it is a tremendous achievement to have achieved security in 20 years even though so heavily beleaguered as Israel has been. It is a realization of the messianic dream of 20 centuries that the State of Israel has come about at all. It is a conflict of joy, gratification, and deep anguish that this refuge could not have been created sooner, to have saved at least some of the 6 million Jews who perished in the Nazi holocaust.

Indeed, mankind can hardly encompass the awfulness of that tragedy—of man's inhumanity to man.

But, Mr. President, this state and its security, the eloquence which has been shown by its valor in defending itself and in carving out a successful and effective state literally out of the barren soil, must all be tempered by the dangers which peace for the world and for Israel faces today.

As the resolution before us states, if the reception of 1.25 million immigrants was historic, let us remember that there are still more than 3 million who are being prejudiced and discriminated against right now, because they are Jews, in the Soviet Union and in Poland. Jews are also in daily peril in the Arab States of the Middle East and other places throughout the world as are other minorities. But at least they have had the valor and will to carve out a secure place of refuge in Israel.

I speak with the greatest appreciation of the great feeling of sympathy and approval which exists in our country for Israel today and of the feeling that we have in terms of security that Israel is the most reliable ally the United States has in that part of the world. That is all very true—the eastern Mediterranean would be insecure, indeed, and so would the 6th Fleet in the Mediterranean, if little Israel was not there—as we learned when our troops were in Lebanon. Only the fact that Israel was on the flank of Lebanon made it possible for us to get our troops out of there when we wanted to. The reputation of Israel in the State Department and the Pentagon has justifiably grown.

But the danger is very grave. The United Nations' efforts to seek peace in the Near East have not been implemented, that there are serious dislocations that could involve the very life and survival of Israel, backed by guerrilla raids across its borders intended to destroy its national existence and greater threats.

But to this very moment the Arab States still will not sit down and talk peace. The tragic Arab refugees still remain flotsam and jetsam, because their own Arab brothers have not seen fit to seek a final and conclusive settlement of their status.

When all this is compounded by the fact that the naked confrontation between the United States and the Soviet Union is the most keen, dramatic, and vivid in the Mediterranean—where the Russian fleet is now five times the size it has ever been before and would like to confront the 6th Fleet and, indeed, is actually garrisoned in Egyptian ports as an element in the conflict which still exists there between the Arab States and Israel, we must realize that American policy will have a great deal to do with whether the promise of this resolution before us to all nations in the Near East—to wit, that they shall meet as neighbors—will actually be redeemed and that Israel cannot be allowed to be disadvantaged in terms of its own security in the sophisticated weaponry which the Soviet Union is pouring into the Arab States. Even valor cannot stand against the kind of ultramodern missiles which, in one instant, sank an Israeli destroyer miles away.

Thus, Mr. President, the commemoration of Israel's 20th anniversary, thankful as it is, must be taken within the context of the continuing relation of a small state which must still struggle in blood and treasure to survive. And perhaps continue to struggle for a very long time.

The absolutely indispensable friendship for this small state which is represented by the United States in its own interests, as well as in an idealistic interest, is exemplified by the fact that we were the first to recognize that state in 1948 under President Harry Truman—exactly 20 years ago.

It is with these thoughts that I hope my colleagues will greet this resolution with deep satisfaction, just as I have greeted it.

Mr. YARBOROUGH. Mr. President, I desire to speak to the resolution which was offered by the leaders of the Senate on the 20th anniversary of the independence of Israel.

It was my privilege to go on a mission to Israel in 1961. As I looked at those bare Judean hills, with little green trees, 2 or 3 feet high, standing out there, with rocks sticking out, I wondered how the trees could live. It looked like a waste of money. Yet Israel was collecting money in this country, and men were planting trees there. This was on hills which, in Biblical times, were clothed with forests, and where animals roamed. They had been bare for hundreds of years.

I was back in Israel in 1966, en route to Teheran for an interparliamentary conference. I traveled the same route from Tel Aviv to Jerusalem. The hills that looked so bare in 1961 had turned green, and the trees were 10 to 12 feet high, and the hills that had been barren for hundreds of years were becoming forested.

Israel and Israelis are showing the whole Middle East and the Arab countries what can be done to the mountains and hills there by reforestation. If the other countries would copy the Israeli example of soil and water conservation it would be of inestimable value to the hundreds of millions of people who live in those dry, arid countries. The Israelis are literally making the desert blossom as a rose by the practice of reforestation, which helps hold back the water. They will have springs and they will have brooks that ran in Biblical times, and that have been dried up for hundreds of years. They will flow again. This transformation from barren land to forest took place in 5 years.

Coming from a State which has a true desert, and then an area of aridity, but not a desert, and then an area with a plentiful and abundant supply of rainfall, up to 60 inches, seeing trees in that whole belt of dry Texas country struggle for existence, and having lived for 8 years in El Paso with 8 inches of rainfall, and having seen trees struggle for existence, I marveled at the growth of those trees in Israel in 5 years.

I think Israel is setting an example for all her neighbors that they could copy with tremendous benefits to themselves—far more benefits than they would have gotten out of any of the wars, if they had won them. I believe this example is one which could be followed with great benefit by any emerging country. I congratulate the people of Israel.

When I was in Israel I visited some of the collective farms. There, I learned that they had found out, after the collective farms had run a while, that the immigrants would abandon them as soon as they would be able to leave and go to a city, and that they had great problems getting people to stay on these state collective farms. So finally Israel began to grant those farmers the right to have a little patch of their own. The farms were owned and operated entirely by the state; but lately they have given the individual workers on those farms, tracts of their own, to cultivate and raise a gar-

den, and now, Mr. President, the people are staying on the collective farms.

So the people of Israel have begun to learn what the free enterprise system is. When they give the immigrants a little piece of land to grow some of their own crops, some of their own fruit, and provide a part of their own living, they are not having the problem with those immigrants that they had when they denied the inherent nature of a man to want to have something he can call his own. That denial succeeded only in driving them off the collective farms. So Israel, through evolution, has learned the value of private ownership.

I might add that the last time I was there, I learned that they were exporting more oranges than any other country in the world. I do not mean to say they were the world's best oranges; they could not touch the quality of the oranges from Florida, the State represented by the distinguished occupant of the chair [Mr. HOLLAND]. But they are exporting oranges to Europe. Their efficient use of land and water, to a person who comes from a great agricultural State, was most impressive. I believe that through her wise use of her natural resources, and the diligence and hard work of her people, Israel is setting an example by which many nations could profit.

Mr. President, when I went to Africa I visited the Israel Embassies, and was told that, due to the fact that they had recently gained their independence, they had great influence in Africa, and the newly emerging nations of Africa were listening to Israel's views on independence.

Because Israel, like those countries, had had its independence only a short period of time, and the people of Israel are doing heroic and gigantic things to build, on that small tract of poor, denuded, exploited land, a great country. Through wise and careful use of the resources of that land, they are bringing it back to great productivity and fertility. I take my hat off to them for what they have accomplished in that little, dry strip of territory along the Mediterranean. They are making of it a showplace for all the world to see.

Mr. President, I yield the floor.

Mr. SCOTT. Mr. President, today we observe the 20th anniversary of the establishment of the State of Israel.

This is an observance of great moment, not alone to Israel but to the friends of that gallant nation throughout the world who believe, as I do, that Israel has an importance that transcends both time and geography.

The land itself is the birthplace of civilization as we know it today and it has special meaning to all three of the world's great religions.

But for the Jewish people, it is the "homeland."

Since 73 A.D., when the last Jewish defenders died after a valiant stand at Masada, the Jewish people dreamed of a return to their traditional homeland. In the 19th century a band of determined people known as Zionists decided that this dream could be brought to reality and began the settlement of Palestine.

But throughout the 20th century, as Jews got closer and closer to establishing a homeland, their goal always seemed to elude them. It was during the 1940's that I first began helping that objective as a Member of the U.S. House of Representatives.

Through resolutions in the 1940's, conferences with the then Secretary of State, and a variety of other activities, I learned more about the goals of the establishment of a homeland. I grew increasingly convinced that such an objective was in the interests of free representative government, stability in the Middle East, and therefore in the best interests of the United States.

There were even times when I was intermediary in the purchases of certain supplies vital to the effort.

Therefore, following the establishment of the State of Israel in 1948 I felt a satisfying sense of participation in an act of creation.

Today, Israel stands proud and vigorous as a leading nation of the free world. It has accepted immigrants from throughout the world and built a nation literally from the ground up.

Israel has proved not only that it has the will and the capacity to defend its rights and sovereignty through the force of arms, but that it has the will and capacity also to grow and hold its own as a defender of the principles of government to which we in the United States fully subscribe.

For both reasons, Israel has been the center of controversy. Its neighbors resent the establishment of a Jewish homeland and regularly move to eliminate the state. The Soviet Union, partly to enlist the support of the Arab states and partly out of fear of strong free institutions, has moved vast military forces into the area.

It must be our task to see that neither inflamed jealousies nor international communism weaken or destroy the only real friend the United States has in that area of the world.

We in the United States move by word and deed to uphold free institutions throughout the world, sometimes—as in Vietnam—at the cost of many American lives and billions of American dollars. In the Middle East, the Israelis are doing that job for us and for all the free world with a minimum of demands upon the United States.

But we must meet those demands. We dare not let down the gallant Israelis. We must reinforce in their minds the fact that we have as deep a commitment to their freedom as we do to free people everywhere. And we must help with military hardware Israel's need for deterrent strength.

And we must also work for peace.

The only real solution to the problems that beset the Middle East is an end to the bitterness and a permanent peace through direct negotiations.

The Middle East has a vast potential for good. The desert can bloom like a garden not only in Israel but throughout the area if its people will come together with reason and in harmony.

That has been the end to which I have worked for a quarter of a century. That should be the objective of all of us on this day when we observe the 20th anniversary of the State of Israel and when we congratulate a people for a job well done that still needs more work, more patience and continued dedication to the good of all mankind.

Mr. PROUTY. Mr. President, I join Senators in commemorating the 20th anniversary of Israel independence day.

This is a memorable day for any nation, but for the valiant country of Israel it has so much more significance because of the history of struggle for its people.

The theme of the song from "The Man From La Mancha" is the hope of the impossible dream. The Nation of Israel is testimony to the value of dreaming an impossible dream. Some 32 centuries ago the ancestors of today's Jews migrated into Palestine and made portions of it their home. Following the Roman conquest of Jerusalem in 63 B.C., the Jews gradually dispersed to the four corners of the world. Though forced to live in exile for almost 2,000 years they remained bound together by a common body of beliefs, knowledge of customs, and by a shared concept of their own history and destiny—the deliverance from exile and return to the homeland.

From the Balfour Declaration of 1917 to the withdrawal of British troops in December of 1947, the impossible dream of a great people came closer and closer to the hour.

From the Israeli Declaration of Independence on May 14, 1948, to this very minute the Israelis have demonstrated their determination and valiant efforts to defend and build their homeland into a viable nation.

I personally extend to the new Israeli Ambassador, Gen. Yitzhak Rabin, my congratulations on his country's 20th anniversary and I wholeheartedly support the resolution introduced by my distinguished colleagues.

Mr. MUSKIE. Mr. President, I am pleased to join my colleagues in tribute to Israel on the occasion of her 20th birthday today.

Twenty years is but a moment in history for those people who waited thousands of years for a land to call home.

But in these two decades, the people of Israel have telescoped centuries of progress. Arid lands have been cultivated into fertile fields. Cities and towns, universities, museums, and a representative and stable government have been built.

An industrious people have established a modern and progressive society which is both a marvel and an inspiration to thoughtful men around the world.

I wish this brave nation continued progress in the years ahead.

Mr. WILLIAMS of New Jersey. Mr. President, this week marks the 20th anniversary of the rebirth of the Jewish State of Israel.

After almost 2,000 years of wandering throughout the world, Jews again have a nation that is their homeland.

Israel's rebirth was marred by an immediate outbreak of hostilities with her Arab neighbors. The 1948 war was followed by further war in 1956 and 1967. In all these conflicts, Israel emerged victorious. But her security is by no means certain today. The Arab nations have threatened genocide for 20 years and

refuse to discuss peace. Soviet arms and advisers have been poured into Egypt and Syria.

In the past 20 years, Israel has reclaimed the arid desert and made it bloom. Medical technology in Israel is the most advanced of any Mideastern nation. Her citizens enjoy the highest standard of living in that region of the globe and exercise their full rights under a truly democratic form of government.

It is a privilege for me to salute the gallant young State of Israel on this anniversary, and it is my fervent hope that the year to come will bring lasting peace to that troubled region.

Gov. Richard Hughes of New Jersey has declared Friday, May 3, to be "New Jersey Salute to Israel Day." I join with my fellow citizens of New Jersey in this most deserved honor.

Mr. GRIFFIN. Mr. President, I am pleased to join today in cosponsoring a resolution honoring the people and State of Israel.

Twenty years ago Israel emerged as a new member of the family of nations. Undaunted by overwhelming political, military, and economic obstacles which threatened their survival, the people of this proud land struggled successfully to create a new existence.

From humble beginnings, the State of Israel has created a strong and buoyant economy with scant, natural resources. The concept of democracy took root and has flourished. All nations can learn much from the Israel experience. For the past two decades, the world has observed Israel surmount every imaginable adversity to become, through hard work and perseverance, a model of successful nation building.

And so I join my colleagues in extending best wishes and congratulations to Israel on the 20th anniversary of her existence as a state. We honor her people and share her ideals as a nation. And we hope that the time will come when the trying political troubles of the Middle East can be resolved in the spirit of peace and mutual trust.

Mr. CLARK. Mr. President, today's turbulent world offers us fewer and fewer occasions for celebration and hope and assurance of the future. One of these rare events, most certainly, is the 20th anniversary of the Republic of Israel's independence, which we honor in the Senate today.

The free world and free men and women everywhere have heartfelt reason to rejoice in the miracle of Israel's survival and success. Survival has required the waging of three successful wars against enormous odds to preserve the young nation's independence and promise.

More than any other new nation born in this century, Israel has proved the indomitable strength of democracy. The miracle of Israel lies not alone in the flourishing democracy it has created in the Holy Land but in its unique success in spreading the idea and practice of democracy, along with economic and technical progress, to other lands, to emerging nations in Africa and Asia.

The abiding admiration, affection, and rapport that the people of the United States feel for Israel is also rooted deeply in the common elements of our national origins. Israel and the United States were both born of a great and dramatic "ingathering" of the dispossessed from many corners of the world, and ingathering, as Emma Lazarus wrote of the poor, the huddled masses yearning to breathe free, the homeless and the tempest-tossed.

These were our country's founders, and they were Israel's. These were the refugees from persecution and oppression who shaped our common freedoms, molded our precious liberties, and created our factories and farms.

Our countries are linked together by our mutual dedication to the democratic dream, to our profoundly shared belief in the dignity of man and the preciousness of human life. The men and women of Israel and the people of the United States are today, and must always be, brothers and sisters in a common cause, the common ideal of human brotherhood.

But while we rejoice in two decades of Israel's independence and progress, we do not permit ourselves to forget that this new nation and its courageous pioneering people are not yet secure. They are, regretably, as embattled today as 20 years ago when the blue-and-white flag with the Star of David was first raised over Jerusalem and Haifa and collective farms from Dan to Beersheba.

Because Israel's enemies proclaim today, as they have in years past, their fanatical obsession with destroying the nation and driving its people into the sea, Israel today and tomorrow must know that America stands stanchly by its side.

Israel more than ever before is an oasis of democracy and humanity in the Middle East; therefore it deserves and must have every kind of support—economic, political and military—that the United States and other free nations can possibly extend.

I pledge to Ambassador Rabin and to Israel's heroic men and women that it shall have that support in full measure. I am determined that Israel shall live and that "Shalom" will become not only a greeting and a hope, but a reality of encompassing peace for all time to come.

Mr. HARTKE. Mr. President, today is the birthday of a modern miracle in the land that spawned Western civilization and the world's greatest religions.

Israel is a miracle in many ways. It is a miracle that such a state was created 20 years ago. It is a miracle that it survived what its citizens know as the war of independence when its armed services surmounted those of surrounding countries who outnumbered them nearly 20 to 1.

Israel is a miracle in the way her determined young men and women have made the desert bloom with oranges now sold around the world. She has made King Solomon's mines produce copper. She has turned sea water into sweet. She has unlocked the secrets of atomic energy. She has planted a million trees on the slopes near Jerusalem. She has begun to fulfill a 2,000-year-old dream.

Today Jerusalem has been reopened as the Holy City of three faiths and all have free access to their respective shrines.

Today Israel is exporting know-how in science, technology, and agriculture to newer nations in Africa and Asia. She even teaches modern methods to Europe.

Faced with danger from attack, guerrilla raids from neighbors, and a land which still suffers from the neglect of centuries, Israel is prospering nevertheless. She is a Western-oriented democracy that is an oasis in a desert of despotism and feudalism. She is America's unshakable ally.

When the history of the last half of this century is read by our descendants, it will be marked by the gallant people who fled tyranny and oppression and who began again to make this Biblical land flow with milk and honey. From the ghettos of North Africa and the concentration camps of Europe, from all corners of the globe, the dregs of humanity returned to the land of their dreams and their prayers.

Free men who believe that freedom will inevitably triumph join today in saluting the 20th anniversary of the miracle that is Israel.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that my name be added to the list of Senators extending congratulations to the people of Israel on this, the 20th anniversary of the establishment of an independent Jewish state.

Mr. YARBOROUGH. Mr. President, I ask unanimous consent that my name be added to that list also.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The absence of a quorum having been noted, the clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

DAVID DELLINGER—COMMUNIST AGITATOR—ACTIVE IN PLANNING POOR PEOPLE'S MARCH

Mr. RANDOLPH. Mr. President, there are elements of anti-America, as well as rightful concern for the betterment of the unemployed and the oppressed, as the initial stages of the poor people's march are carried forward.

There are strong evidences of Communist planning and participation in the forthcoming demonstrations in our Nation's Capital. One of these anti-United States poor people's march proponents is David Dellinger.

Mr. President, on October 23 of last year I said in remarks in the Senate that David Dellinger was "a key organizer and perhaps chief proponent of the march on the Pentagon."

I further stated that this anti-America propagandist has publicly announced that he is a Communist. He spent several weeks in Washington, D.C., planning and coordinating the so-called peace march with its disruptive and damaging demonstrations which took place with, finally, violence as marchers attempted to storm and literally to take over the Pentagon.

Mr. Dellinger at that time described himself as a "non-Soviet Communist." I ask the questions: Where is this Mr. Del-

linger now? What is Mr. Dellinger doing now? Our answer is set forth in the Washington Post of Tuesday morning, April 30. I read from the article which was published on that date as follows:

One of those who accompanied Mr. Abernathy was David Dellinger, a chief organizer of the peace demonstration at the Pentagon last October.

Surely, Mr. President, the Reverend Ralph Abernathy knows—and I repeat, knows—the record of David Dellinger.

Why, I ask, and I ask it calmly, but I ask it earnestly, does Reverend Abernathy permit or encourage this anti-American perpertrator of violence and hate to stand by his side in conferences with members of the Cabinet of the United States?

Mr. Abernathy very properly preaches nonviolence.

The ACTING PRESIDENT pro tempore. The 3 minutes of the Senator have expired.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the senior Senator from West Virginia may proceed for an additional 7 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. RANDOLPH. Mr. President, I repeat that Mr. Abernathy very properly preaches nonviolence, but he is apparently associated with David Dellinger, who would seek to destroy—not by appeal, not by presentation, not by discussion—our very Government and the institutions on which our Republic is founded.

Mr. President, I am not by nature an alarmist. I do not pose as a latter day Paul Revere who rides to warn of approaching foes and inpending doom. I am, however, a realist, and the immediate realism of the pressing problem, the soon to be massive march on Washington, demands—and when we are speaking of demands this is the type demand I wish to underline and underscore—that Members of Congress and all those persons with official and constitutional authority in this country be on guard to protect the property of the people—yes, the people themselves—in these coming weeks, and, in fact, in the coming months, and in truth, in the coming years. Our Government, in the last analysis, is the people themselves.

The right of American citizens to petition the officials of their Government is a precious right. It certainly extends to those men and women who now come to Washington for what they believe to be a redress of wrongs. But that right of petition becomes a mockery if they seek to disrupt their Government and break our laws because our laws are for not a particular segment of our society; our laws are meant to be obeyed by all Americans.

Mr. President, I do not cite my credentials this afternoon of more than 23 years of membership in the House of Representatives and in the Senate of the congressional responsibility which I have undertaken. That record, however, for those who wish to search it out, is proof positive of my advocacy in helping people who are in need to help themselves.

We have done much, but we need to do more. We have made significant progress in meeting the needs of those who need help in this country. I repeat: We have not yet done enough.

Mr. President, I commend to Senators the editorial published in the St. Louis Globe-Democrat, as printed in the RECORD at the request of the distinguished Senator from Missouri [Mr. SYMINGTON]. The editorial is entitled "In Praise of the United States."

Mr. President, I ask unanimous consent to have this editorial printed in the RECORD again, even though it has already appeared there.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

IN PRAISE OF THE UNITED STATES

Who will say a good word for the United States of America?

We will—and we are sure that nearly all Americans will if they can get the microphone away from the professional hate mongers, the political opportunists and the "Let's All Kick America" crowd.

If one arrived in America from a foreign country and had to judge the worth of our nation by the outpourings of most of our national magazines, a good share of the television programs and the sensation-seeking segment of the press, he might conclude that we are headed straight for hell in a bucket.

As we see it, it is a matter of perspective. Too many newscasters and writers have lost theirs. They seem to get their "kicks" by puffing up the nation's faults to the exclusion of nearly everything else.

They give unlimited time and space in their columns and on the air ways to the hairy creeps and the hate peddlers until they are nauseatingly out of balance. They are sick, and they seem to want to get sicker.

What is all this about? There appears to be an undeclared national contest to see who can kick the United States the hardest.

If this is not so, why have certain television networks and publications given the Stokely Carmichaels, the Dr. Spocks and other far-out radicals such an inordinate amount of coverage?

It seems that every time Carmichael feels an urge for sedition or mayhem, someone shoves a microphone in his face or starts taking notes.

Have those gentlemen with a nose for garbage not been largely responsible for making these rap-America radicals national figures?

The venom against the United States fairly oozes from certain TV and newspaper personalities. These armchair generals nightly asked loaded questions of selected "experts" on the Vietnam war to support their demand that we get out even though they haven't the faintest idea how we could do so with honor or what might follow a precipitous pullout.

Most of such self-appointed experts on military and foreign affairs would be horrified if anyone in Washington had the bad judgment to follow their advice.

Small wonder the American people are confused about the war.

We also have political candidates who would sell out not only their own grandmother but the United States as well for a few votes.

They are so "hooked" on using our government as a punching bag, that they grin like idiots every time they are getting their "enjoys."

We realize the country is undergoing a national orgy of violence and crime, that its popularity abroad has reached an all-time low, and that it faces an awesome challenge in meeting the problems that seem to confront it on all sides.

But what good does it do to make the worst of it?

This is a time for cool heads to take over from the hotheads. It is an occasion for loyal Americans to stand against this sickening outpouring of venom, to make a special effort to point out some of the good things about America.

This is a time to take off our coats and go to work to solve our problems, rather than moan incessantly about them.

Instead of complaining helplessly about riots in the ghettos, find out what you can do to help the great majority of non-rioting, responsible Negroes, who must live in these rotten conditions, achieve a better life.

Try giving the President your support in his all-out search for peace in Vietnam—a peace with honor, not a cover for retreat.

We happen to be citizens of the nation that has done more than any other in the world for the cause of freedom and democracy.

Americans have an unmatched record for sacrifice on the battlefield, for generosity in giving their money and other resources to help other nations withstand aggression, to remain free.

Why worry when Boris Bolshevik from Outer Monrovia or Vulgarslavia screams anti-Americanism?

He knows and you know that were it not for the United States, President Charles de Gaulle of France might today be making his anti-American speeches in a Nazi prison and the Communist flag might well be flying over Greece and who knows where else in Europe?

Filipinos today might be speaking Japanese and Australians might be eating with chopsticks had not American men fought for freedom in World War II, as they fought in World War I, in Korea, and as they fight today in South Vietnam.

No wonder we feel patriotic and couldn't care less if some rum-dum should mumble something inane about "super patriotism."

To the United States of America we say, "long may you live." To the sour-mouthed calamity howlers, we say, "Nuts to you!"

Mr. RANDOLPH. Mr. President, sometimes I think it has become outmoded to speak of obligations, that it is out of date to think in terms of disciplines in our beloved country, as we continue to make improvements within the lawful processes of our Government in serving the needs of all the people.

I read and reread the editorial and I wish that every Member of the Senate would read and reread it. We should plan to distribute it to every college and university, to every high school and junior high school in America.

Mr. President, I do not stand at the wailing wall; I do not press the panic button. My observations are made earnestly today so that all of us will be cautioned to be on the alert—and, more importantly, to rededicate ourselves to "the unfinished task" that lies before us as responsible legislators who represent responsible people.

EXECUTIVE COMMUNICATIONS, ETC.

The ACTING PRESIDENT pro tempore laid before the Senate the following letters, which were referred as indicated:

REPORT OF VIOLATION OF ADMINISTRATIVE CONTROL OF APPROPRIATIONS REGULATIONS (DD–67–11)

A letter from the Deputy Secretary of Defense, transmitting, pursuant to law, a report of violation of administrative control of appropriations regulations (with an accompanying report); to the Committee on Appropriations.

APPROVAL OF LOAN TO WESTERN ILLINOIS POWER COOPERATIVE, INC.

A letter from the Administrator, Rural Electrification Administration, U.S. Department of Agriculture, transmitting, pursuant to law, information relating to a $3,078,000 loan to the Western Illinois Power Cooperative, Inc., Jacksonville, Ill., for the financing of certain transmission facilities and miscellaneous improvements to existing generation facilities (with an accompanying paper); to the Committee on Appropriations.

FEDERAL RAILROAD SAFETY ACT OF 1968

A letter from the Secretary of Transportation, transmitting a draft of proposed legislation to authorize the Secretary of Transportation to establish safety standards, rules, and regulations for railroad equipment, trackage, facilities, and operations, and for other purposes (with an accompanying paper); to the Committee on Commerce.

PROPOSED AMENDMENT OF FOREIGN SERVICE BUILDINGS ACT

A letter from the Assistant Secretary of State for Congressional Relations, transmitting a draft of proposed legislation to amend the Foreign Service Buildings Act, 1926, to authorize additional appropriations (with an accompanying paper); to the Committee on Foreign Relations.

REPORT OF NATIONAL ADVISORY COUNCIL ON INTERNATIONAL MONETARY AND FINANCIAL POLICIES

A letter from the Chairman, National Advisory Council on International Monetary and Financial Policies, transmitting, pursuant to law, a special report on the proposed amendment of the articles of agreement of the International Monetary Fund establishing a facility based on special drawing rights in the Fund and modifications in the rules and practices of the Fund (with an accompanying report); to the Committee on Foreign Relations.

PROPOSED SPECIAL DRAWING RIGHTS ACT

A letter from the Secretary of the Treasury, transmitting a draft of proposed legislation to provide for U.S. participation in the facility based on special drawing rights in the International Monetary Fund and for other purposes (with an accompanying paper); to the Committee on Foreign Relations.

REPORT OF THE COMPTROLLER GENERAL

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on administration by civil agencies of allowances authorized for Federal employees upon permanent change of official duty station, dated April 30, 1968 (with an accompanying report); to the Committee on Government Operations.

REPORT ON HENRY E. DOOLEY CLAIM

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report and recommendation concerning the claim of Henry E. Dooley (with an accompanying report); to the Committee on the Judiciary.

REPORT OF NATIONAL SAFETY COUNCIL

A letter from the President, National Safety Council, transmitting, pursuant to law, a report of the audit of the financial transactions of the Council for the year 1967 (with an accompanying report); to the Committee on the Judiciary.

WAGE PROTECTION

A letter from the Secretary, Department of Labor, transmitting a draft of proposed legislation to apply prevailing wage protection in accordance with the Davis-Bacon Act to the construction or reconstruction of buildings to be leased for public purposes (with accompanying papers); to the Committee on Labor and Public Welfare.

DISPOSITION OF EXECUTIVE PAPERS

A letter from the Acting Archivist of the United States, transmitting, pursuant to law, a list of papers and documents on the files of several departments and agencies of the Government which are not needed in the conduct of business and have no permanent value or historical interest and requesting action looking to their disposition (with accompanying papers); to a Joint Committee on the Disposition of Papers in the Executive Departments.

The ACTING PRESIDENT pro tempore appointed Mr. MONRONEY and Mr. CARLSON members of the committee on the part of the Senate.

PETITIONS AND MEMORIALS

Petitions, etc., were laid before the Senate, or presented, and referred as indicated:

By the ACTING PRESIDENT pro tempore:

A resolution adopted by the Nishihara Village, Okinawa, Assembly praying for the immediate removal of B–52 bombers from Okinawa; to the Committee on Armed Services.

A resolution adopted by the Assembly of Naha City, Okinawa, praying for the reversion of Okinawa to the fatherland; to the Committee on Foreign Relations.

REPORTS OF A COMMITTEE

The following reports of a committee were submitted:

By Mr. WILLIAMS of New Jersey, from the Committee on Labor and Public Welfare, with amendments:

S. 2688. A bill to extend and otherwise amend certain expiring provisions of the Public Health Service Act for migrant health services (Rept. No. 1101); and

S.J. Res. 117. Joint resolution to call a White House Conference on Aging in 1970 (Rept. No. 1102).

EXECUTIVE REPORTS OF A COMMITTEE

Mr. MAGNUSON. Mr. President, from the Committee on Commerce, as an executive session, I report favorably sundry nominations in the Coast Guard which have previously appeared in the CONGRESSIONAL RECORD and, to save the expense of printing them on the Executive Calendar, ask unanimous consent that they may lie on the Secretary's desk for the information of any Senator.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The nominations, ordered to lie on the desk, are as follows:

Roger L. Kennedy, and sundry other officers, for promotion in the Coast Guard;

James M. Mullen, and sundry other officers, to be permanent commissioned officers of the Coast Guard;

Robert L. DeMichiell, and David A. Sandell, to be members of the permanent teaching staff of the Coast Guard Academy; and

Kenneth Barry Allen, and sundry other persons, to be permanent commissioned officers in the Coast Guard.

BILLS AND JOINT RESOLUTIONS INTRODUCED

Bills and joint resolutions were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. YARBOROUGH:

S. 3421. A bill to provide additional protection for the rights of participants in private pension plans, to establish minimum standards for vesting and funding of private pension plans, to provide an insurance program guaranteeing plan termination protection, and for other purposes; to the Committee on Labor and Public Welfare.

(See the remarks of Mr. YARBOROUGH when he introduced the above bill, which appear under a separate heading.)

By Mr. BREWSTER:

S. 3422. A bill for the relief of Liu Kam; to the Committee on the Judiciary.

By Mr. FULBRIGHT (by request):

S. 3423. A bill to provide for U.S. participation in the facility based on special drawing rights in the International Monetary Fund, and for other purposes; to the Committee on Foreign Relations.

(See the remarks of Mr. FULBRIGHT when he introduced the above bill, which appear under a separate heading.)

By Mr. RANDOLPH:

S. 3424. A bill to include air traffic controllers within the provisions of section 8336(c) of title 5, United States Code, relating to the retirement of certain Government employees; to the Committee on Post Office and Civil Service.

By Mr. BROOKE (for himself and Mr. KENNEDY of Massachusetts):

S. 3425. A bill to designate certain lands in the Monomoy National Wildlife Refuge, Barnstable County, Mass., as wilderness; to the Committee on Interior and Insular Affairs.

(See the remarks of Mr. BROOKE when he introduced the above bill, which appear under a separate heading.)

By Mr. MAGNUSON (for himself, Mr. HARTKE and Mr. MCGEE) (by request):

S. 3426. A bill to authorize the Secretary of Transportation to establish safety standards, rules, and regulations for railroad equipment, trackage, facilities, and operations, and for other purposes; to the Committee on Commerce.

(See the remarks of Mr. MAGNUSON when he introduced the above bill, which appear under a separate heading.)

By Mr. WILLIAMS of New Jersey (for himself, Mr. MORSE, Mr. CASE, and Mr. HARTKE):

S. 3427. A bill to prohibit and make unlawful the hiring of professional strikebreakers in interstate labor disputes; to the Committee on Labor and Public Welfare.

By Mr. MUNDT (for himself, Mr. SPARKMAN, Mr. CARLSON, Mr. TOWER, Mr. BOGGS, Mr. HRUSKA, and Mr. FANNIN):

S.J. Res. 165. Joint resolution authorizing the President to proclaim August 11, 1968, as "Family Reunion Day"; to the Committee on the Judiciary.

(See the remarks of Mr. MUNDT when he introduced the above joint resolution, which appear under a separate heading.)

By Mr. ALLOTT:

S.J. Res. 166. Joint resolution to authorize the President to designate the period beginning June 23, 1968, and ending June 28, 1968, as "National Environmental Health Week"; to the Committee on the Judiciary.

By Mr. MAGNUSON:

S.J. Res. 167. Joint resolution to establish an advisory commission to study and report on the need for port facilities in the United States for commercial nuclear ships; to the Committee on Government Operations.

(See the remarks of Mr. MAGNUSON when he introduced the above joint resolution, which appear under a separate heading.)

S. 3421—INTRODUCTION OF BILL TO PROVIDE ADDITIONAL PROTECTION FOR RIGHTS OF PARTICIPANTS IN PRIVATE PENSION PLANS

Mr. YARBOROUGH. Mr. President, last year I introduced S. 1024, the Welfare and Pension Plan Protection Act of 1967, to require fiduciary responsibility in the administration of pension plans. As I said at that time, "other problems in connection with such funds have not yet been solved." The present bill will go a long way in helping to solve these other problems.

First, the legislation I am introducing today will impose minimum standards for all pension plans in order to provide vested retirement benefits to all participants who have worked for the same employer for 10 or more years after reaching the age of 25.

Employees may now work a lifetime for the same employer and yet be entitled to nothing on leaving, even though a sound pension plan exists. More than 12 million employees are now covered by pension plans under which benefits do not vest after 10 years' service. Some 3 million of these persons will, in the absence of this bill, never receive any benefits from these plans. It is not just or equitable that a man, when he changes jobs, should lose rights acquired over so long a period even though the necessity of private circumstances may compel him to seek employment elsewhere.

Second, some 500 pension plans, covering more than 25,000 workers, terminate each year, with all the losses that this entails. The bill will require minimum standards of funding to assure that sufficient assets are accumulated to carry out promises to employees and their dependents. Too often, the protection offered by private pension plans is illusory, and a worker, at the age of 60, suddenly discovers that he will not get the promised monthly income so important to his future plans.

Third, to assure that such promises are kept, the bill provides insurance against losses to pension funds caused by involuntary termination of a plan before it is fully funded, as in cases of bankruptcy or plant closure.

The bill will avoid a severe immediate impact upon current pension plans by permitting various arrangements by which such plans can make careful transitions in order to permit easy adjustment. In addition, the Secretary of Labor is authorized to approve alternative methods of meeting standards in special cases.

Finally, the bill provides for continuing studies of all aspects of pension plans, including the possibility of portability of pension credits.

The private pension system has done an effective job in building supplemental retirement security for a major section of the Nation's work force. Nevertheless, there are certain glaring deficiencies in the system.

Today, private pension plans cover more than 25 million American workers and involve assets of over $100 billion.

They are a major part of the financial security of millions of working men and their families. The present bill will require that this security be real and not an illusion. It is true that the majority of pension plans are secure, but without the protection of this bill, the individual employee has no way of knowing whether his plan is one of that majority.

In the 10 years since the Committee on Labor and Public Welfare last studied pension plans, these plans have grown enormously. It is time for us to again look at how pension plans are operating.

Mr. President, I ask unanimous consent that the text of this bill and an explanatory statement of its provisions be printed at this point in the RECORD.

The ACTING PRESIDENT pro tempore. The bill will be received and appropriately referred; and, without objection, the bill and the statement will be printed in the RECORD.

The bill (S. 3421) to provide additional protection for the rights of participants in private pension plans, to establish minimum standards for vesting and funding of private pension plans, to provide an insurance program guaranteeing plan termination protection, and for other purposes, introduced by Mr. YARBOROUGH, was received, read twice by its title, referred to the Committee on Labor and Public Welfare, and ordered to be printed in the RECORD, as follows:

S. 3421

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Pension Benefit Security Act".

FINDINGS AND POLICY

SEC. 2. (a) The Congress finds that private pension plans are a major and increasing factor with respect to the continued well-being and security of millions of employees and their dependents; that because of the present and anticipated size and importance of these plans they have a significant bearing on industrial relations, on employment, and on the national economy; that owing to their interstate character they have become an important factor in commerce; that a large volume of the activities carried on by such plans are effected by means of the mails and instrumentalities of interstate commerce; that they substantially affect the revenues of the United States because they are afforded preferential Federal tax treatment; that despite the enormous growth in such plans many employees with long years of employment are losing anticipated retirement benefits owing to the lack of vesting provisions in such plans; that owing to the inadequacy of current minimum standards, the soundness and stability of plans with respect to adequate funds to pay promised benefits may be endangered; that owing to the involuntary termination of plans before requisite funds have been accumulated, employees and their dependents have been deprived of anticipated benefits; and that it is therefore desirable in the interests of employees and their beneficiaries, for the protection of the revenue of the United States, and to provide for the free flow of commerce, that minimum standards be provided assuring the equitable character of such plans, their financial soundness, and protection of benefits in the event of involuntary plan termination.

(b) It is hereby declared to be the policy of this Act to protect interstate commerce, the Federal taxing power, and the interests of participants in private pension plans and their beneficiaries by improving the equitable character and the soundness of such plans by requiring them to vest the accrued benefits of employees with significant periods of service, to meet minimum standards of funding, and to protect the vested rights of participants against losses due to involuntary plan termination.

DEFINITIONS

SEC. 3. When used in this Act—

(a) The term "Secretary" means the Secretary of Labor.

(b) The term "pension plan" means any plan, fund or program which is communicated or its benefits described in writing to the employees as a group and which was heretofore or is hereafter established or maintained by an employer or by an employer together with an employee organization, for the purpose of providing for its participants or their beneficiaries, by the purchase of insurance or annuity contracts or otherwise, retirement benefits, including any profit-sharing plan which provides benefits at or after retirement; providing that nothing herein shall be construed to include any plan, fund, or program to which only employees contribute.

(c) The term "employee organization" means any labor union or any organization of any kind, or any agency or employee representation committee, association, group, or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning an employee pension plan, or other matters incidental to employment relationships.

(d) The term "employee" means any individual employed by an employer.

(e) The term "participant" means any employee or former employee of an employer or any member of an employee organization who is or may become eligible to receive a benefit of any type from a pension plan, or whose beneficiaries may be eligible to receive any such benefit.

(f) The term "beneficiary" means a person designated by a participant or by the terms of a pension plan who is or may become entitled to a benefit thereunder.

(g) The term "employer" means any person acting directly as an employer or indirectly in the interest of an employer in relation to a pension plan, and includes a group or association of employers acting for an employer in such capacity.

(h) The term "person" means an individual, partnership, corporation, mutual company, joint stock company, trust, unincorporated organization, association, or employee organization.

(i) The term "State" means any State of the United States, the District of Columbia, the Canal Zone, the Commonwealth of Puerto Rico, any territory or possession of the United States, or the Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331–1343).

(j) The term "administrator" whenever used in this Act means—in the case of a pension plan established or maintained by a single employer, the employer; in the case of a plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees or other similar group of representatives of the parties who established or maintained the plan.

(k) The term "regular retirement benefit" means only that benefit payable under the plan in the event of retirement at the regular retirement age.

(l) The term "accrued portion of the regular retirement benefit" means—

(1) Under a plan which provides for payment of a fixed benefit, that portion of such benefit which would have been payable at regular retirement age, computed as of the day of termination of employment, as the number of years of credited service under the

plan bears to the total possible years of credited service had employment continued to the regular retirement age.

(2) Under a plan which provides for benefits based solely upon the amount contributed to the employee's account, the amount credited to such account towards regular retirement benefits at the time of termination of employment.

(m) The term "regular retirement age" means not later than age 65.

(n) The term "vested liabilities" means the present value of the immediate or deferred benefits for participants and their beneficiaries which are nonforfeitable and for which all conditions of eligibility have been fulfilled under the provisions of the plan prior to its termination.

COVERAGE

SEC. 4. (a) Except as provided in subsections (b) and (c), this Act shall apply to any pension plan—

(1) if it is established or maintained by any employer engaged in commerce or in any industry or activity affecting commerce or by such employer together with any employee organization representing employees engaged in commerce or in any industry or activity affecting commerce; or

(2) if such plan is established or maintained by any employer or by any employer together with any employee organization and if, in the course of its activities, such plan, directly or indirectly, uses any means or instruments of transportation or communication in interstate commerce or the mails.

(b) This Act shall not apply to any pension plan if—

(1) such plan is administered by the Federal Government or by the government of a State or by a political subdivision of a State, or by an agency or instrumentality of any of the foregoing;

(2) such plan is established and maintained outside the United States primarily for the benefit of persons who are not citizens of the United States;

(3) such plan provides contributions or benefits for a sole proprietor or in the case of a partnership, a partner who owns more than 10 percent of either the capital interest or the profits interest in such partnership.

(c) In addition, titles II, III and IV, shall not apply to any pension plan if—

(1) the plan has a fixed contribution rate and does not provide an amount expected to be paid as a fixed benefit;

(2) the plan is a profit-sharing plan which provides benefits at or after retirement;

(3) The plan is one in which benefits are paid solely from the general assets of the employer.

(d) For purposes of this section—

(1) The term "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.

(2) The term "industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Management Relations Act, 1947, as amended, or the Railway Labor Act, as amended.

EFFECTIVE DATE

SEC. 5. The provisions of titles I, II, and III of this Act shall become effective two years after enactment of this Act. The provisions of titles IV and V of this Act shall become effective upon the date of enactment of this Act.

TITLE I—VESTING

ELIGIBILITY REQUIREMENTS

SEC. 101. No pension plan subject to this title which was adopted after the date of enactment of this Act shall, after the effective date of this title, provide as a condition for eligibility to participate in such plan a period of service longer than three years or an age higher than age twenty-five. Any pension plan subject to this title which was in effect on or before the date of enactment of this Act may retain its eligibility requirements until such plan is amended to provide increased benefits to participants or beneficiaries or ten years after the date of enactment of this Act, whichever occurs first. Thereafter, such pension plan shall comply with the eligibility requirements applicable to pension plans adopted after the date of enactment of this Act.

NONFORFEITABLE BENEFITS

SEC. 102. Every pension plan subject to this title shall provide for nonforfeitable rights to regular retirement benefits when the plan has been in effect for five years or more, as follows:

(a) PRESENT PLANS.—Every pension plan created before the date of enactment of this Act shall, in accordance with one of the following alternatives, provide that the rights of employees to receive benefits are nonforfeitable—

(1) After a specified period of service not exceeding ten years, as to that part of the accrued portion of the regular retirement benefit (including benefits provided under amendment) which is attributable to periods after the effective date of this title, or

(2) After a specified period of service not exceeding ten years, as to not less than 10 per centum of the entire accrued portion of the regular retirement benefit (including benefits provided under amendment) which percentage shall increase at a rate equivalent to at least 10 percentage points for each year the plan has been in effect after the effective date of this title, so that the percentage will reach 100 per centum no more than 9 years after the effective date of this title; or

(3) After a specified period of service not to exceed 20 years, as to the entire accrued portion of the regular retirement benefit (including benefits provided under amendment) which period shall be reduced at a rate equivalent to at least 1 year for each year the plan has been in effect after the effective date of this title, so that 10 years after the effective date of this title the required period of service does not exceed 10 years; or

(4) In accordance with such other provisions making nonforfeitable, after a specified period of service, the entire accrued portion of the regular retirement benefit, which are approved by the Secretary, after notice and opportunity to be heard, as substantially consistent with the purposes of this section as expressed in subsection (a) paragraphs 2 and 3.

(b) NEW PLANS—Every pension plan created on or after the date of enactment of this Act shall provide that the rights of the employees to receive benefits shall be nonforfeitable—

(1) After a specified period of service not to exceed fifteen years, as to the entire accrued portion of the regular retirement benefit as of the sixth year of the plan's operation, which period shall be reduced at a rate equivalent to at least one year for each year after the sixth year of the plan's operation, so that in the eleventh year of the plan's operation, the required period of service does not exceed ten years; or

(2) After a specified period of service not to exceed ten years, as to 50 per centum of the entire accrued portion of the regular retirement benefit as of the sixth year of the plan's operation, which percentage shall increase at a rate equivalent to at least 10 percentage points for each year the plan has been in effect after the sixth year of the plan's operation, so that in the eleventh year of the plan's operation, the entire accrued portion of the regular retirement benefit shall be nonforfeitable after a period of service not to exceed ten years.

(c) COLLECTIVE BARGAINING AGREEMENTS.—With respect to a pension plan created or operated under a collective bargaining agreement in existence as of the date of enactment of this Act but due to expire after the effective date of this title, the provisions of this title shall apply after the expiration date of such collective bargaining agreement but in no event later than one year after the effective date of this title.

(d) PERIOD OF SERVICE.—In computing the period of service under the plan, an employee's entire service with the employer contributing to or maintaining the plan shall be considered, except the following may be disregarded—

(1) service prior to age twenty-five;

(2) service during which the employee declined to contribute to a plan requiring employee contributions;

(3) service with a predecessor of the employer contributing to or maintaining the plan (except where the plan of the predecessor has been continued in effect by the successor employer); and

(4) service broken by periods of suspension of employment, provided that the rules governing such breaks in service are not unreasonable or arbitrary as determined under regulation of the Secretary.

(e) PROVISIONS DEALING WITH FORFEITURE OF BENEFITS—Nothing contained in this Title shall be construed to disallow any plan provision—

(1) making benefits forfeitable for misconduct such as, theft, dishonesty or divulging the employer's trade secrets to competitors, provided that such provisions are not unreasonable or arbitrary as determined under regulation of the Secretary; or

(2) adopted pursuant to regulations of the Secretary of the Treasury or his delegate to preclude discrimination in the event of early termination of a plan.

(f) CONTRIBUTORY PLANS—No pension plan subject to this Title to which employees contribute shall provide for forfeiture of benefits which accrued during participation in the plan by the employee and which were attributable to employer contributions, solely because of withdrawal by such employee of amounts attributable to his own contributions.

DISTRIBUTION OF NONFORFEITABLE BENEFITS TO TERMINATING PARTICIPANTS

SEC. 103. (a) Nonforfeitable benefits accrued by terminating participants may be distributed in the manner set forth in the plan, provided that distribution of such benefits shall commence no later than the regular retirement age and that such benefits are paid in the same form as retirement benefits are paid.

(b) The administrator shall, upon termination of a vested participant's employment prior to regular retirement age, report to the Secretary of Health, Education and Welfare such information as the Secretary of Health, Education and Welfare may prescribe by regulation to facilitate notification of vested rights to such participants or their beneficiaries. The Secretary of Labor shall reimburse the Secretary of Health, Education and Welfare for use by the latter of personnel and facilities in the performance of his functions under this subsection.

ENFORCEMENT OF VESTING STANDARDS

SEC. 104. Whenever the Secretary finds it necessary or appropriate for the enforcement of the provisions of this title or any rule or regulation thereunder, he may require a certificate of approval with respect to the vesting provisions of any pension plan. Denial of any such certificate shall be by order of the Secretary, and only after reasonable opportunity for hearing. A certificate of approval shall be issued by the Secretary when he determines that the vesting provisions in question do not violate the requirements of this title. Whenever a cer-

tificate of approval is required for any pension plan, it shall be unlawful for the administrator of any such plan to maintain or operate such plan unless a certificate has been obtained.

TITLE II—FUNDING

FUNDING SCHEDULE

SEC. 201. (a) GENERAL RULE—Every pension plan subject to this title shall:

(1) Provide for contributions to the plan in amounts necessary to meet an amount equal to the normal cost since inception of the plan plus interest on any unfunded past service costs,

(2) Maintain a minimum ratio of assets to vested liabilities according to the following schedule:

If the plan has been in effect (in years).	The ratio of assets to vested liabilities shall be at least (in per centum).
5	20
6	24
7	28
8	32
9	36
10	40
11	44
12	48
13	52
14	56
15	60
16	64
17	68
18	72
19	76
20	80
21	84
22	88
23	92
24	96
25	100

(b) SPECIAL PROVISION FOR PLANS FIVE OR MORE YEARS OLD—In the case of a plan which on the effective date of this title has been in effect for five or more years, the administrator, when he files the first funding status report required by section 202 of this Act, may choose as the required funding ratio—

(1) the ratio specified by the schedule in subsection (a)(2), or

(2) the actual funding ratio of the plan. Beginning with the ratio thus chosen, the required ratio shall increase by 3 percentage points each year for the next five years and 4 percentage points each year thereafter until the ratio becomes 100 percent.

(c) SPECIAL PROVISION FOR PLANS LESS THAN FIVE YEARS OLD—A plan which on the effective date of this title has been in effect for less than five years shall become subject to (a)(2) above as soon as the plan has been in effect for five years. The options provided in subsection (b) shall be available to a plan in this category except that the time allowed for increasing the required ratio by 3 percentage points each year shall be limited to a period equal to the number of years the plan has been in effect prior to the effective date of this title.

(d) SPECIAL PROVISION FOR PLAN AMENDMENTS—If, after the effective date of this title, a plan which has been in existence for five or more years is amended with a resulting increase in vested liabilities, the administrator may adjust the required funding schedule according to one of the following methods:

(1) The plan's funding ratio may be decreased in proportion to the ratio which the additional vested liabilities bear to the total vested liabilities after the amendment. The resulting ratio will be increased each year by percentage point increments according to the applicable funding rate specified in subsection (a)(2) or (b).

(2) If the amendment results in a 25 per centum or greater increase in vested liabilities, the portion of vested liabilities created by the amendment may be regarded as a new plan subject to the funding schedule imposed by subsection (a)(2). In this case, the administrator shall keep separate records for ascertaining the funding status of the vested liabilities created by the amendment.

FUNDING STATUS REPORTS

SEC. 202. (a) Within one hundred and fifty days after the end of the plan's first fiscal year during which it is subject to section 201(a)(2), and within one hundred and fifty days after the end of each third fiscal year thereafter, or within one hundred and fifty days after the end of any fiscal year in which the plan is amended so as to increase vested liabilities, the administrator of the plan shall file with the Secretary, a statement containing the following information:

(1) the amount of normal cost since inception of the plan plus interest on any unfunded past service costs;

(2) the total amount of the plan's vested liabilities at the close of its preceding fiscal year;

(3) the assets held by the plan as of the close of its preceding fiscal year valued at market value or by any other method approved by the Secretary pursuant to regulation;

(4) the number of years the plan has been in effect;

(5) a statement of the amount, if any, by which the assets held by the plan either exceed or fall below the amount of assets required in order for the plan to meet the funding ratio required under section 201(a)(2);

(6) such other information determined by the Secretary by regulation to be necessary for adequate disclosure of a plan's funding status.

(b) At such times as the administrator of a plan subject to this title is required to file a report with the Secretary pursuant to (a) above, the administrator shall make available to each person having a vested benefit such report, by posting such report in a prominent location at the employer's place or places of business or through such other means that will insure that persons with vested benefits have adequate access to such information.

ENFORCEMENT OF FUNDING STANDARDS

SEC. 203. (a) When the contributions to a pension plan fall below amounts necessary to meet the requirements of section 201(a)(1), the Secretary shall require by order, after notice and opportunity for hearing, that the administrator take such steps as the Secretary shall find necessary to guarantee that the rights of each participant to benefits accrued to the date of such failure to make appropriate contributions, to the extent then funded, or the rights of each participant to the amounts credited to his account as such time, are nonforfeitable in the event of the participant's termination, except that nonforfeitable benefits resulting other than through operation of this subsection shall take priority over nonforfeitable benefits resulting exclusively from operation of this subsection with respect to any allocation of plan assets or distribution to participants.

(b) When a pension plan's ratio of assets to vested liabilities falls below the funding ratio required by section 201(a)(2) as determined by the Secretary—

(1) the plan's vested liabilities shall not be increased by an amendment until the plan's actual funding ratio is equal to or greater than the required funding ratio; and

(2) the administrator shall inform, in writing, each person having a vested benefit as to (A) the amount of his vested benefit, (B) the portion of his vested benefit protected by assets and insurance, and (C) the portion of his vested benefit not protected by assets and insurance. Such reports shall be made annually until the plan's actual funding ratio is equal to or greater than the required funding ratio;

(3) the administrator shall make such additional reports to the Secretary as the Secretary may by rule or regulation prescribe to aid in the enforcement of this title.

(c) When a pension plan's ratio of assets to vested liabilities falls below the funding ratio required by section 201(a)(2) for five consecutive years the Secretary shall require by order, after notice and opportunity for hearing, that the administrator take such steps as the Secretary shall find necessary to suspend further accumulation of vested liabilities until such time as the funding deficiency has been removed: *Provided, however,* That the Secretary may, after notice and opportunity for hearing, order the action specified herein to be taken at any time after a funding deficiency has occurred but prior to expiration of the five-year period whenever, in his discretion, such action is necessary to protect the interests of participants. The Secretary may by order revoke or modify any order previously made under this subsection, if, after notice and opportunity for hearing, he finds that the circumstances upon which the order was predicated do not exist.

(d) During any time that a pension plan is in suspended status pursuant to action taken under subsection (c), the Secretary, whenever he finds it necessary to protect the interests of participants, may, after notice and opportunity for hearing, require by order that the plan terminate and wind up its affairs in accordance with the provisions of title III and procedures established by the Pension Benefit Insurance Corporation.

TITLE III—VESTED LIABILITY INSURANCE

INSURANCE COVERAGE

SEC. 301. (a) Every pension plan required to meet a specified funding ratio in accordance with section 201(a)(2) of this Act shall obtain insurance covering unfunded vested liabilities to protect participants and beneficiaries against possible loss of vested benefits arising from an essentially involuntary termination of the plan. The amount of insurance shall be the plan's vested liabilities less the greater of—

(1) 90 percent of the assets needed to meet the funding ratio required under section 201(a)(2), or

(2) 90 percent of the plan's actual assets.

(b) The Pension Benefit Insurance Corporation shall issue a certificate of insurance coverage to each plan administrator after receipt by the Corporation from the Secretary of a copy of the statement required by section 202(a). A plan's insurance coverage shall be continuous from the date of issuance of the certificate until cancelled.

(c) The Pension Benefit Insurance Corporation shall not insure—

(1) any unfunded vested liabilities created by a plan amendment which took effect within three years immediately preceding termination of the plan; or

(2) any unfunded vested liabilities resulting from the participation in the plan by a participant owning 10 percent or more of the voting stock of the employer contributing to the plan or by any participant owning a 10 percent or more interest in a partnership contributing to the plan.

PREMIUMS

SEC. 302. (a) Each plan shall pay a premium for insurance under this title at such uniform rates prescribed by the Pension Benefit Insurance Corporation, based upon the amount of unfunded vested liability which is to be insured and upon such other factors as the Corporation determines to be appropriate. The premium for the initial three-year period shall be not more than 0.6 percent of the amount insured.

(b) Should any administrator of a plan

subject to this title fail to pay any premiums required to be paid under subsection (a), the Pension Benefit Insurance Corporation shall give the administrator of the plan not less than thirty days notice of intention to cancel insurance unless the premium is paid by the end of such period. If the unpaid premium is not paid by the end of such period, the Corporation shall cancel the plan's certificate of insurance and the plan shall give notice of such cancellation to each person entitled to a vested benefit under the plan.

CLAIMS PROCEDURE

SEC. 303. (a) The administrator of a plan insured under the provisions of this title shall file a claim with the Pension Benefit Insurance Corporation in the event the plan is terminated for reasons of financial difficulty or bankruptcy, plant closing, by order of the Secretary, or such other reasons as the Corporation by regulation shall specify as reflecting an essentially involuntary plan termination. The Corporation shall be authorized to honor such claim up to the limits prescribed by section 304 if it finds that the assets of the plan may not be sufficient to pay vested liabilities.

(b) Claims shall be made as specified in the rules and regulations of the Pension Benefit Insurance Corporation. The Corporation shall also require the administrator who files a claim to submit proof of all facts necessary to establish a claim, but in any event, the Corporation may in its discretion independently make such investigation as may be necessary for it to determine the validity of any claim. The Corporation shall require the payment of any contributions owing to the plan and required to meet the funding ratio specified in section 201(a)(2) of this Act, and may sue to recover such contributions on behalf of the plan in connection with settling any claim.

(c) The Pension Benefit Insurance Corporation shall give written notice to the administrator of its decision on any claim. Upon notice that a claim will be honored the administrator shall wind up the affairs of the plan by arranging for the purchase of single premium annuities from a qualified life insurance company for each person entitled to vested benefits, or by making such other arrangements for the distribution of vested benefits as the Corporation may by regulation approve as providing adequate protection to persons with vested benefits. The administrator shall be allowed a reasonable period in which to liquidate the assets of the plan. Upon completing the process of liquidation he shall thereafter submit to the Corporation, within such period specified by regulation of the Corporation, a plan termination report. Such report shall fully disclose the amount of the vested benefit payable to each person under the terms of the plan as of the date the plan was terminated, the amount realized from liquidating assets, the aggregate amount of funds needed to purchase single premium annuities to provide the vested benefit to which each person is entitled under the terms of the plan, and such additional information as may be prescribed by rules of the Corporation. Upon receipt of the plan termination report, the Corporation shall direct the purchase of annuities or authorize the implementation of such other approved arrangement for distributing vested benefits, and pay the claim for insurance in the amount authorized under this Title.

PAYMENT OF CLAIMS

SEC. 304. The amount of insurance payable under a valid claim shall be the difference between the realized value of the assets of the plan and the amount of vested liabilities, limited to the amount of insurance determined under section 301 at the time the plan was terminated; provided that,

(a) in any case where a plan would be entitled to relief under section 502 of this Act with respect to meeting the funding ratio specified in section 201(a)(2) if it were not terminating, such relief may be accorded to the plan upon termination and the amount of insurance to be paid shall be adjusted to take into account the relief so provided; except that no relief in this connection shall be accorded where the only basis presented for such relief is a decline in the value of the assets of the plan;

(b) in any case where Pension Benefit Insurance Corporation is unable to recover any contributions or portions thereof owing to a terminating pension plan to meet the funding ratio specified in section 201(a)(2), the amount of insurance to be paid shall be adjusted to take into account such unpaid contributions.

(c) in any case where a plan is terminated as the result of the closing of a plant of an employer contributing to such plan and the vested liabilities of such terminated plan are less than 20 percent of the vested liabilities of all the pension plans maintained by such employer, such employer shall be liable to reimburse the Pension Benefit Insurance Corporation for any insurance paid by the Corporation in satisfaction of a claim presented by such terminated plan, and the Corporation is authorized to sue such employer to recover the amount of any unpaid liability lawfully payable under this provision.

UNINSURED PLANS

SEC. 305. It shall be unlawful for any administrator of a plan subject to this Title to maintain or operate such a plan without the certificate of insurance required by this Title.

TITLE IV—PENSION BENEFIT INSURANCE CORPORATION

CREATION OF PENSION BENEFIT INSURANCE CORPORATION

SEC. 401. There is hereby created a Pension Benefit Insurance Corporation (hereinafter referred to as the "Corporation") which shall insure the vested liabilities of pension plans subject to Title III. Such corporation shall be an agency and instrumentality of the United States, within the Department of Labor, subject to the general supervision and direction of the Secretary of Labor. The principal office of the Corporation shall be in the District of Columbia but there may be established agencies or branch offices elsewhere in the United States under rules and regulations prescribed by the Corporation.

GENERAL POWERS OF CORPORATION

SEC. 402. The Corporation—

(a) Shall have succession in its corporate name.

(b) May adopt, alter and use a corporate seal, which shall be judicially noticed.

(c) May enter into and carry out such contracts or agreements as are necessary in the conduct of its business.

(d) May sue and be sued, in any district court of the United States or its territories or possessions or the Commonwealth of Puerto Rico, which courts shall have exclusive original jurisdiction, without regard to the amount in controversy, of all suits brought by or against the Corporation.

(e) May adopt, amend and repeal bylaws, rules and regulations governing the manner in which its business may be conducted and the powers vested in it may be exercised.

(f) Shall be entitled to the use of the United States mails in the same manner and upon the same conditions as the executive departments of the Federal Government.

(g) Shall have power when necessary to carry out the provisions of Title III, to make investigations and in connection therewith to enter such places and inspect such records and accounts and question such persons as the Corporation may deem necessary to determine the facts relative thereto. For the purpose of any investigation provided for herein, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, papers, and documents) of the Federal Trade Commission Act of September 16, 1914, as amended (15 U.S.C. 49, 50) are hereby made applicable to the jurisdiction, powers, and duties of the Corporation or any officers designated by the Corporation.

(h) Shall determine the character of and the necessity for its obligations and expenditures and the manner in which they shall be incurred, allowed and paid, subject to provisions of law specifically applicable to wholly owned government corporations.

(i) Shall have such powers as may be necessary or appropriate for the exercise of the powers specifically vested in the Corporation and all such incidental powers as are customary in corporations generally.

SPECIFIC POWERS OF CORPORATION

SEC. 403. In the fulfillment of its purposes and in carrying out its annual budget programs submitted to and approved by the Congress pursuant to the Government Corporation Control Act, the Corporation is authorized to use its general powers in accordance with the provisions of Title III of this Act to—

(a) Establish adequate premium rates to cover the insurance of vested liabilities of private pension plans and the administrative expenses of the Corporation. In determining such premium rates, the Corporation shall consult with the Technical Advisory Committee on Pension Benefit Insurance established by section 405.

(b) Establish procedures for the application, renewal and cancellation of insurance, including the prescribing of such forms and reports as may be necessary or appropriate to implement such procedures.

(c) Collect premiums and manage and invest the funds of the Corporation.

(d) Adjust and pay claims for insurance under rules prescribed by the Corporation.

(e) Conduct research, surveys and investigations relating to pension plan insurance and assemble data for the purpose of establishing sound bases for insurance.

(f) Bring an action in the proper district court of the United States or United States court of any place subject to the jurisdiction of the United States, to enjoin any acts or practices that constitute or will constitute a violation of Title III or IV or of any regulation or order issued thereunder, or obtain any other appropriate relief, and the United States district courts and the United States courts of any place subject to the jurisdiction of the United States shall have jurisdiction for cause shown, to restrain violations of Title III or Title IV and provide for any other appropriate relief.

(g) Carry out such other functions as are required by this Act and as Congress may specifically authorize or provide for.

PENSION BENEFIT INSURANCE FUND

SEC. 404. (a) There is hereby created within the Treasury a separate fund for pension benefit insurance (hereafter in this section called "the fund") which shall be available to the Corporation without fiscal year limitation for the purposes of this Title.

(b) There is hereby authorized to be appropriated such sums as are necessary to provide capital for the fund. All amounts received as premiums and any other moneys, property, or assets derived from operations in connection with this Title shall be deposited in the fund.

(c) All claims, expenses and payments pursuant to operation of the Corporation under this Title shall be paid from the fund. From time to time, and at least at the close of each fiscal year, the Corporation shall pay from the fund into the Treasury as miscellaneous receipts interest on the cumulative amount of appropriations provided as capital to the fund, less the average undisbursed cash balance in the fund during the year. The rate of such interest shall be determined

by the Secretary of the Treasury, taking into consideration the average market yield during the month preceding each fiscal year on outstanding marketable Treasury obligations. Interest payments may be deferred with the approval of the Secretary of the Treasury, but any interest payments so deferred shall themselves bear interest.

BOARD OF DIRECTORS: TECHNICAL ADVISORY COMMITTEE

SEC. 405. (a) The management of the Corporation shall be vested in a Board of Directors (hereinafter referred to as the "Board"). The Board shall consist of the Secretaries of Labor and Commerce ex officio and three other Directors appointed by the President by and with the advice and consent of the Senate. The President shall designate a Chairman of the Board from among the three Directors he appoints. Of the first three Directors, one shall be appointed to serve for a term of 2 years; one shall be appointed to serve for a term of 4 years; one shall be appointed to serve for a term of 6 years. Thereafter, upon the expiration of the term of office, each succeeding Director shall be appointed to serve for a term of 6 years. Not more than three of the members of such Board of Directors shall be members of the same political party. Each appointed Director shall receive compensation at the rate of $150 per diem when engaged in the actual performance of duties of the Board, and may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by 5 U.S.C. 5703 for persons in the government employed intermittently, except that any such Director who holds another office or position under the Federal Government shall serve without additional compensation. A majority of the directors shall constitute a quorum of the Board and action shall be taken only by a majority vote of those present.

(b) In addition to the Board of Directors there shall be a Technical Advisory Committee on Pension Benefit Insurance which shall consist of five members to be appointed by the Secretary after consultation with the Secretary of Commerce, to advise and consult with the Corporation with respect to carrying out the purposes of this Title. The Secretary shall select for appointment to the Committee individuals who are, by reason of training or experience or both, familiar with and competent to deal with, problems involving employees' pension plans and problems relating to the insurance of such plans. Members of the Committee shall be appointed for a term of two years. Members shall be compensated at the rate of $100 per day for each day they are engaged in the duties of the Committee and, while serving away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by 5 U.S.C. 5703 for persons in the government employed intermittently. The Committee shall meet at Washington, District of Columbia, upon call of the Chairman of the Board of Directors who shall serve as Chairman of the Committee. Meetings shall be called by such Chairman not less often than twice a year.

PERSONNEL OF CORPORATION

SEC. 406. The Corporation shall appoint and fix the compensation of such officers, attorneys and employees as may be necessary for the conduct of its business in accordance with the provisions of title 5, United States Code, governing appointment in the competitive service, and chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, and may obtain the services of experts and consultants in accordance with section 3109 of title 5, United States Code, at rates for individuals not to exceed the per diem equivalent for GS–18.

COOPERATION WITH OTHER GOVERNMENTAL AGENCIES

SEC. 407. The provisions of section 509 shall be applicable to the Corporation.

INVESTMENT OF FUNDS

SEC. 408. All money of the Corporation, except appropriated funds, may be invested in obligations of the United States or in obligations guaranteed as to principal and interest by the United States.

TAX EXEMPTION

SEC. 409. The Corporation, including its franchise, its capital, reserves, and surplus, and its income and property shall be exempt from all taxation imposed by any State, county, municipality or subdivision thereof, except nothing herein exempts from taxation any real property acquired and held by the Corporation.

RECORDS; ANNUAL REPORT

SEC. 410. The Corporation shall at all times maintain complete and accurate books of account and shall file annually with the Secretary of Labor a complete report as to the business of the Corporation, a copy of which shall be forwarded by the Secretary of Labor to the President for transmission to the Congress.

GOVERNMENT CORPORATION CONTROL ACT

SEC. 411. The provisions of the Government Corporation Control Act (59 Stat. 597, 31 U.S.C. 841), as applicable to wholly owned government corporations, shall be applicable to the Corporation.

TITLE V—ADMINISTRATION, CIVIL PROCEEDINGS, AND MISCELLANEOUS PROVISIONS

RULES AND REGULATIONS

SEC. 501. The Secretary shall prescribe such rules and regulations as he finds necessary or appropriate to carry out the provisions of titles I, II, and V. Among other things, such rules and regulations may define accounting, technical and trade terms used in such provisions; and may prescribe the form and detail of all reports required to be made under such provisions; and may provide for the keeping of books and records, and for the inspection of such books and records.

VARIATIONS; APPEALS BOARD

SEC. 502. (a) PROCEDURE FOR VARIATIONS.—The Secretary on his own motion or after having received the petition of an administrator may, after giving interested persons an opportunity to be heard, and in accordance with the provisions of subsections (b) or (c) below, prescribe an alternative method for satisfying the requirements of titles I or II, or both, with respect to any pension plan or any type of pension plan subject to this Act.

(b) GENERAL RULE FOR GRANTING VARIATIONS.—The Secretary may prescribe an alternative method for satisfying the requirements of titles I or II, or both, for such limited periods of time as is necessary or appropriate to carry out the purposes of this Act and which will provide adequate protection to the participants and beneficiaries in the plan, whenever he finds that the application of titles I or II, or both, would (1) increase the costs of the parties to the plan to such an extent that there would result a substantial risk to the voluntary continuation of the plan or a substantial curtailment of pension benefit levels or the levels of employees' compensation, or (2) impose unreasonable administrative burdens with respect to the operation of the plan, having due regard to the particular characteristics of the plan or the type of plan involved. Nothing herein shall be construed to authorize the Secretary to grant a permanent variation from the requirements of titles I or II, or both, except as indicated in subsection (c) below.

(c) SPECIAL RULE FOR MULTIEMPLOYER PLANS.—On the basis of the factors described in (b) above, the Secretary may grant a variation from the provisions of title I on a permanent basis to any plan jointly entered into by five or more employers within a single industry (other than employers under common ownership or control) in which (1) employees in the plan represent a substantial proportion of employees in the industry, either nationally or in a particular region or labor market area, (2) the plan provides for complete transferability of pension benefit credits within the group of employers who are parties to the plan, and (3) a substantial proportion of job changes involving a shift of employers by plan participants takes place within the scope of the plan. No permanent variation shall be authorized which has the effect of permitting the adoption of a period of service longer than fifteen years for vesting accrued portions of regular retirement benefits.

(d) VARIATION APPEALS BOARD.—There is hereby established a Variation Appeals Board which shall hear and determine appeals from decisions denying grants of variations in accordance with procedures promulgated by the Secretary pursuant to regulation. Such Board shall include the Secretary of Labor or his designee, the Secretary of Commerce or his designee, and a person jointly selected by the Secretaries of Labor and Commerce from outside the Federal Government who is, by reason of training or experience or both, familiar with and competent to deal with, problems involving employees' pension plans. The Secretary of Labor or his designate shall serve as presiding officer on such Board. Such non-Federal Government member of the board shall be compensated at the rate of $100 per day for each day he is engaged in the work of the Board, and, while serving away from his home or regular place of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by 5 U.S.C. 5703 for persons in the Government employed intermittently.

INVESTIGATIONS

SEC. 503. (a) The Secretary, in his discretion, may investigate any facts, conditions, practices, or matters which he may deem necessary or appropriate to determine whether any person has violated or is about to violate any provisions of titles I, II, and V or any rule, regulation, variation or order thereunder, or to aid in the enforcement of the provisions of titles I, II, and V, in the prescribing of rules, regulations, variations or orders thereunder, or in obtaining information with respect to studies undertaken pursuant to section 506. The Secretary, in his discretion, may publish or make available to any interested person or official, information concerning any matter which may be the subject of investigation.

(b) For the purpose of any investigation provided for in (a), the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, papers, and documents) of the Federal Trade Commision Act of September 16, 1914, as amended (15 U.S.C. 49, 50), are hereby made applicable to the jurisdiction, powers and duties of the Secretary or any officers designated by him.

CIVIL ENFORCEMENT

SEC. 504. (a) Whenever it shall appear to the Secretary that any person is engaged or about to engage in any acts or practices that constitute or will constitute a violation of any provision of titles I, II, or V or of any regulation, variation or order issued thereunder, he may in his discretion, bring an action in the proper district court of the United States or United States court of any place subject to the jurisdiction of the United States, to enjoin such acts or practices, and upon a proper showing a perma-

nent or temporary injunction or restraining order shall be granted.

(b) The United States district courts and the United States courts of any place subject to the jurisdiction of the United States shall have exclusive jurisdiction with respect to violations of titles I, II or V or regulations, variations or orders issued thereunder, and of all suits in equity and actions at law brought to enforce any liability or duty created by, or to enjoin any violation of, titles I, II or V or regulations, variations or orders thereunder, and to provide such other relief as may be appropriate.

COURT REVIEW OF ORDERS

SEC. 505. The administrator of any pension plan who has been denied a certificate of approval under title I, or whose plan has been suspended or ordered terminated under title II or who has been aggrieved by any final decision with respect to any claim for payment of insurance under title III or with respect to denial of a request for a variation under this title, may obtain a review of the order denying such application for a certificate of approval, such order suspending or terminating the plan, such final decision with respect to an insurance claim or denial of a request for a variation, or any other order or final decision made under this Act, in the United States District Court for the district where the principal office of the plan is located. Such court shall have jurisdiction to affirm, modify or set aside such order or decision, in whole or in part. The administrative findings as to the facts, if supported by the evidence, shall be conclusive.

STUDIES

SEC. 506. The Secretary is authorized and directed to undertake research studies relating to pension plans, including but not limited to (1) the effects of this Act upon the provisions and costs of pension plans, (2) the role of private pensions in meeting the economic security needs of the Nation, and (3) the operation of private pension plans including types and levels of benefits, degree of reciprocity or portability, and financial characteristics and practices.

ANNUAL REPORTS

SEC. 507. The Secretary shall submit annually a report to the Congress covering his administration of this Act for the preceding year and including such information, data, research findings, and recommendations for further legislation in connection with the matters covered by this Act as he may find advisable.

ADMINISTRATIVE PROCEDURE ACT

SEC. 508. The provisions of the Administrative Procedure Act shall be applicable to this Act.

OTHER AGENCIES AND DEPARTMENTS

SEC. 509. In order to avoid unnecessary expense and duplication of functions among Government agencies, the Secretary may make such arrangements or agreements for cooperation or mutual assistance in the performance of his functions under this Act and the functions of any such agency as he may find to be practicable and consistent with law. The Secretary may utilize, on a reimbursable basis, the facilities or services of any department, agency, or establishment of the United States or of any State or political subdivision of a State, including the services of any of its employees, with the lawful consent of such department, agency, or establishment; and each department, agency, or establishment of the United States is authorized and directed to cooperate with the Secretary and, to the extent permitted by law, to provide such information and facilities as he may request for his assistance in the performance of his functions under this Act. The Attorney General or his representatives shall receive from the Secretary for appropriate action such evidence developed in the performance of his functions under this Act as may be found to warrant consideration for criminal prosecution under the provisions of this Act or other Federal law.

SEPARABILITY PROVISIONS

SEC. 510. If any provision of this Act, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this Act or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

PENALTIES

SEC. 511. Any person who willfully—

(a) violates any provision of this Act or any rule, regulation, variation or order issued thereunder,

(b) makes, passes, utters or publishes any statement in any application, report, document, account or record filed or kept or required to be filed or kept under the provisions of this Act or any rule, regulation, variation or order thereunder, knowing such statement or entry to be false or misleading in any material respect,

(c) forges or counterfeits any instrument, paper or document, or utters, publishes or passes as true any instrument, paper or document, knowing it to have been forged or counterfeited, for the purpose of influencing in any way the action of the Secretary or the Pension Benefit Insurance Corporation,

(d) destroys (except after such time as may be prescribed under any rules or regulations under this Act), mutilates, alters, or by any means or device falsifies any account, correspondence, memorandum, book, paper, or other record kept or required to be kept under this Act or any rule, regulation, variation or order thereunder,

(e) influences or induces or attempts to influence or induce the Secretary or the Pension Benefit Insurance Corporation with respect to any action of the Secretary or the Corporation, by fraud, deceit, misrepresentation or by any manipulative or deceptive device or contrivance, shall upon conviction be fined not more than $10,000 or imprisoned not more than 5 years, or both, except that in the case of such violation by a person not an individual, the fine imposed upon such person shall be a fine not exceeding $200,000.

ADMINISTRATIVE ASSESSMENTS AND APPROPRIATIONS

SEC. 512. (a) Consistent with the policy of title V of the Independent Offices Appropriation Act of 1952 (31 U.S.C. 483a, 65 Stat. 290), the Secretary shall, pursuant to regulation, assess each plan which is subject to this Act such fees or charges as the Secretary deems appropriate to cover administrative costs incurred by the Secretary.

(b) There is hereby authorized to be appropriated such sums without fiscal limitation as may be necessary to enable the Secretary to carry out his functions and duties under this Act.

The statement presented by Mr. YARBOROUGH is as follows:

EXPLANATORY STATEMENT—A BILL FOR "PENSION BENEFIT SECURITY ACT OF 1968"

This draft bill, together with the Department of Labor's existing proposal in the area of fiduciary responsibility, S. 1024 (Yarborough), represents a comprehensive plan for improving the basic soundness and equitable character of the Nation's private pension system. This bill implements the major recommendations made by the January 1965 report of the President's Committee on Corporate Pension Funds and Other Private Retirement and Welfare Programs.

The proposed legislation would:

1. Establish a minimum standard of vesting of retirement benefits after ten years' service after age twenty-five;

2. Establish minimum funding standards to assure accumulation of assets in line with obligations;

3. Establish a system of plan termination protection to assure payment of benefits in the event of involuntary termination of the plan before it is fully funded;

4. Provide specially designed transitional arrangements for existing plans to provide adequate opportunity to adjust to the new standards;

5. Authorize the Secretary to approve alternative methods of meeting the vesting or funding standards where he finds that these standards result in unreasonable cost or impose unreasonable administrative burdens on a plan or certain types of plans;

6. Provide that the vesting and funding requirements are to be administered by the Secretary of Labor;

7. Establish a Pension Benefit Insurance Corporation, a wholly-owned government corporation within the Department of Labor, to administer the termination insurance program;

8. Provide rule-making and enforcement powers with provision for judicial review of administrative decisions;

9. Authorize the Secretary of Labor to conduct studies of pension plans, including, among other things, studies related to portability of pension credits.

Section 1—Title: "Pension Benefit Security Act".

Section 2—Findings and Policy: Congress finds that pension plans are a major factor in the security of millions of persons; that they are an important factor in commerce, and substantially affect the revenues because of preferred tax treatment; that many do not contain vesting provisions, are not properly funded to pay promised benefits, and do not afford adequate protection in the event of involuntary plan termination; and that minimum standards for vesting and funding and protection of benefits in the event of involuntary termination are therefore needed.

Section 3—Definitions.

Section 4—Coverage: The Act will apply to any pension plan in interstate commerce or which uses any means or instruments of transportation or communication in interstate commerce or the mails, if the plan is established or maintained by an employer or employers alone or with an employee organization. The Act will not apply to plans administered by a government unit or agency, or to a plan established outside of the United States for non-citizens, or to certain plans established for the benefit of a proprietor or a partner.

In addition, the funding and insurance requirements of the Act will not apply to unfunded plans, profit-sharing plans, or plans which have fixed contribution rates but no fixed benefits. The vesting provisions will apply to all such plans, however.

TITLE I—VESTING

Basic standard: Full vesting after ten years of employment after age 25.

Transition rules—Existing plans are permitted to: 1. Vest only benefits based on service after the effective date of the standard for any employee with 10 years service, or

2. Vest an increasing proportion of benefits for past and future service for any employee with 10 years service (first year—10 percent; tenth year—100 percent), or

3. Vest benefits for past and future service, beginning in the first year for employees with 20 or more years of service reducing gradually to employees with ten or more years of service after the tenth year.

Transition rules—New plans are permitted to: 1. Vest benefits for past and future service beginning in the sixth year of the plan's operation for employees with 15 or more years of service, reducing gradually to employees with ten or more years of service

after the tenth year of the plan's operation, or

2. Vest an increasing proportion of benefits for past and future service, with 50% of the benefits for 10 years of service (in the sixth year of the plan's operation) and reaching 100% of benefits after the tenth year of the plan's operation.

Limitation on vested benefits: Only regular retirement benefits are vested, not ancillary benefits such as death or "special" early retirement benefits.

Service conditions: Continuous service may be required in order for benefits to vest but safeguards are adopted to prevent artificial breaking of service.

Calculation of vested benefits: Proportionate credit rule will apply under which the vested employee is entitled to his prorated share of the benefit he would have attained had he remained under the plan until retirement.

Distribution of vested benefits: Not later than age 65—To facilitate notification of vested benefits, information on employees terminating with vested benefits will be furnished to the Secretary, HEW, for use at time individual applies for Social Security benefit.

Age and service requirements for plan eligibility: Maximum requirement permitted will be age 25 and three years of service; existing plans may retain current eligibility requirements until plan is amended but not beyond ten years after enactment of this Act.

Contributory plans: Employer-purchased benefits are vested even though the employee is permitted to withdraw his contributions.

Enforcement: The Secretary of Labor may require a certificate of approval for a plan's vesting provisions. Once such a certificate is required, it is unlawful to operate a plan without such a certificate.

TITLE II—FUNDING

Funding standards

Basic approach: To continue the present Internal Revenue Service minimum funding standard as a basis for prescribing a plan's minimum annual contribution but to introduce an additional funding standard as a more meaningful basis for plan termination protection

Termination funding standard: Built around a plan's funding ratio of plan assets to vested liabilities—a schedule is established under which a plan's funding ratio is expected to increase at a rate of 4 percentage points annually, reaching 100 percent (full funding of vested liabilities) after 25 years.

Transition rule for existing plans: Existing plans are accepted into the funding schedule at their current ratio, if this is lower than the funding target specified in the schedule; in addition, for the first five years after the standard is effective, the scheduled increase in the funding target is at the rate of 3 percentage points annually.

Transition rule for new plans: No funding target for first five years at which point the funding target is 20 percent.

Implementing the funding standards

Periodic testing: Each plan will submit basic information on funding status every three years and whenever plan is amended to increase vested liabilities.

Amendments: Funding target can be adjusted after amendments which add to vested liabilities; amendments which increase liabilities by more than 25% may be treated as new plans with new funding targets.

Enforcement: Plans failing to meet IRS minimum funding standard would be required to make accrued benefit rights nonforfeitable (essentially the same as current rule).

Plans failing to meet termination funding standard (1) could not liberalize benefits, (2) would have to inform each employee of effect of funding deficit on his vested benefit, and (3) make such additional reports to the Secretary as are necessary. If a plan fails to meet funding standard for five years, the Secretary can order the plan to suspend further accumulation of vested liabilities. He may do this earlier at his discretion. The Secretary may further require by order the termination of a suspended plan to protect the interests of participants.

TITLE III—VESTED LIABILITY INSURANCE

Basic concept: Full protection for employees' vested benefits against involuntary plan termination through a system providing insurance and enforceability of employer contributions to meet termination funding standard.

Method of providing protection: For plans meeting termination funding standard, vested benefits would be insured—plans not meeting termination funding standard would not be permitted insurance coverage for the amount by which their funding fell short of funding target but in event of plan termination, employing unit, if solvent, would be liable for this amount; otherwise such amount would be covered by insurance.

Insurance procedures: Insurance will be obtained on a three year basis predicated on the report of the plan's funding status.

Amount of insurance: Total vested liabilities less the greater of 90 percent of the actual assets or the assets needed to meet the funding ratio under title II. The 90 percent of assets requirement is intended to provide a uniform limited hedge against loss due to market depreciation of assets.

Premium: Plans would pay premium based on uniform percentage of unfunded vested liabilities—maximum premium rate for initial three-year period is 0.6 percent.

Payment of claims: Claims against insurance fund to be honored only upon essentially involuntary plan termination caused by financial difficulty or bankruptcy, plant closing affecting 20% or more of the vested liabilities of the firm's pension plans, or order of the Secretary—claims to be paid by the purchase of annuities or other approved arrangement.

Additional restrictions on insurance coverage: Benefits created by amendments will not be insured for three years—benefits accruing to participants owning 10 percent or more of the firm will not be insured.

Enforcement: Unlawful to operate a plan without required insurance.

TITLE IV—PENSION BENEFIT INSURANCE CORPORATION

Establishment of Corporation: A wholly-owned Government corporation under the supervision of the Secretary of Labor is established to administer the termination insurance provisions of title III. The management of the Corporation is vested in a five-man board of directors, two of whom shall be the Secretaries of Labor and Commerce serving ex officio. The other three directors, including the Chairman, are to be appointed by the President with the advice and consent of the Senate, and shall serve for a term of six years. No more than three members of the Board of Directors can be of the same political party.

A five-member Technical Advisory Committee on Pension Benefit Insurance is created to advise the Corporation, the members to be appointed by the Secretary after consultation with the Secretary of Commerce.

Powers of Corporation: The Corporation, in addition to possessing general corporate powers, is specifically authorized to: (1) establish adequate premium rates, (2) establish procedures for the application, renewal and cancellation of insurance, (3) collect premiums and manage and invest its funds, (4) adjust and pay claims, (5) conduct research relating to pension plan insurance, and (6) bring actions to enjoin insurance violations.

Financing and administration: To finance the Corporation a revolving fund is established to which premium payments shall be made and from which claims, payments, and expenses shall be paid. The Corporation may also receive appropriations for capital which shall be repayable with interest.

Personnel of the Corporation are to be appointed in accordance with the civil service laws. The Corporation must file annual reports. The Government Corporation Control Act is made applicable to the Corporation.

TITLE V—ADMINISTRATION, CIVIL PROCEEDINGS, AND MISCELLANEOUS PROVISIONS

Variations: Relief from the vesting and funding standards may be provided if such standards would impose unreasonale costs or unreasonable administrative burdens. In general, this relief would be provided only for temporary periods. However, with respect to the vesting standards, broadly based multi-employer plans could apply for permanent variation relief based on their experience in granting transfer rights to employees changing employers within the plan. A Variation Appeals Board is established to review decisions denying such relief.

Administration: The Secretary is authorized to promulgate rules and regulations; the Administrative Procedure Act is made applicable to the Act. The Secretary is authorized to assess and collect an appropriate user charge to cover costs in administering this Act.

The Secretary is authorized to conduct studies into all phases of pension plans, including such important areas as portability of vested credits and plan financial practices. In addition, the Secretary is authorized to cooperate with all other agencies and to utilize their facilities (on a reimbursable basis) to assist him.

Enforcement: The Secretary is authorized to conduct investigations into violations of the vesting and funding requirements, or to assist him in prescribing rules or regulations or making studies. He may bring actions for injunctive or other appropriate relief in federal district courts with respect to violations of the vesting and funding provisions. Judicial review in the federal district courts is provided for all orders and administrative decisions made by the Secretary or the Corporation.

Criminal penalties are provided for willful violation of any provision of the Act, for making false statements or records, for forging or counterfeiting documents for purposes of influencing the Secretary or the Pension Benefit Insurance Corporation, for destroying or falsifying records or for practicing fraud or deceit on the Secretary or the Pension Benefit Insurance Corporation for the purpose of influencing any of their actions. The penalties provided are a fine of $10,000, or imprisonment for not more than five years or both, except that in the case of a corporation, the fine can be as high as $200,000.

Effective date

The vesting, funding, and insurance provisions become effective 2 years after enactment; all other provisions become effective upon enactment.

Mr. LONG of Louisiana. Mr. President, will the Senator yield?

Mr. YARBOROUGH. I yield.

Mr. LONG of Louisiana. I commend the Senator for bringing this matter to the attention of the Senator. This problem has bothered the Senator from Louisiana for some time. May I ask if the Senator is directing the bill to the Labor and Public Welfare Committee or the Finance Committee?

Mr. YARBOROUGH. The Labor and Public Welfare Committee. The reason I am introducing it is that it is the administration bill. The bill has been worked on for a long time by the Department of

Labor. I have been in conference with the representatives of the Department about it. It is finally in such form that it can be offered. Had it been directed to the Finance Committee, I would have yielded the bill to the distinguished Senator from Louisiana.

Mr. LONG of Louisiana. As the Senator knows, from time to time we are able to help with these problems by the tax route, due to the tax-deductible aspect of these plans. In any event, I think this proposal should certainly receive the consideration of Congress. I am happy that the Senator from Texas is introducing it.

Mr. YARBOROUGH. I am glad to hear the Senator say that. Actually, this is a big bill. It is going to take time. It is going to take a lot of study. It is not a bill that can be heard in a few days. It is not a bill that can be passed in a few weeks. It involves a monumental problem. It has been 10 years since Congress made a comprehensive study of private pension systems. As the Senator from Louisiana knows, the matter has been discussed for years and has been worked on for years. I believe now is the time to introduce the bill, to start a dialog on it, and to start pension improvements.

Mr. JAVITS. Mr. President, I am most gratified that the administration has, at long last, recognized the need for legislation establishing minimum standards for private pension plans.

I am very proud that over a year ago I introduced S. 1103, the first comprehensive bill to do precisely that. A cursory examination of the administration's bill indicates that a great many of the subjects covered in S. 1103 have at long last been dealt with by the administration.

I have asked for hearings on my bill, and I was very disappointed that I could not get them. There is now no longer any excuse for not holding hearings on this vitally needed legislation. I shall call on the chairman of the Subcommittee on Labor, the Senator from Texas [Mr. YARBOROUGH], who is the sponsor of the administration bill, to commence hearings as soon as possible, and I have no doubt that they will be held in the near future.

The bill submitted by the administration is similar in many respects to mine. Both would establish minimum standards for vesting and funding and furnish protection against the loss of pension benefits due to involuntary termination of a pension plan prior to its being fully funded. Minimum standards in these areas are essential to protect the retirement security of many millions of Americans who depend on their benefits from pension plans to enable them to live out their postretirement lives in dignity and honor.

As matters now stand, however, it is estimated that only one of every four of the millions of workers covered by pension plans actually will receive any benefits under them.

My bill and the administration bill represent an attempt to cut down this forfeiture ratio of 75 percent and to prevent tragedies such as occurred when Studebaker closed its plant in South Bend, Ind., before its plan was fully funded, with the result that hundreds of workers—some with more than 40 years of service—lost all or most of their pension benefits.

Indeed, if there is any wry pleasure in it and it is pretty tragic, it may be that the Studebaker tragedy awakened us to the need for pension reform; and that is true of me, also. I introduced my bill very soon after that occurred.

So, Mr. President, I conclude as I began: The administration is now in line; the logjam at last has been broken; the matter is ready for hearings. It is urgent. It affects millions upon millions of American workers. I shall cooperate, and I hope and trust and urge that the hearings start at once on the administration bill, on my bill, and on any other proposed legislation and amendments that may properly come before us.

S. 3423—INTRODUCTION OF A BILL TO PROVIDE FOR U.S. PARTICIPATION IN THE FACILITY BASED ON SPECIAL DRAWING RIGHTS IN THE INTERNATIONAL MONETARY FUND

Mr. FULBRIGHT. Mr. President, by request, I introduce, for appropriate reference, a bill to provide for U.S. participation in the facility based on special drawing rights in the International Monetary Fund and for other purposes.

The proposed bill has been requested by the Secretary of the Treasury and I am introducing it in order that there may be a specific bill to which Members of the Senate and the public may direct their attention and comments.

I reserve my right to support or oppose this bill, as well as any suggested amendments to it, when the matter is considered by the Committee on Foreign Relations.

I ask unanimous consent that the bill may be printed in the RECORD at this point, together with the letter from the Secretary of the Treasury to the Vice President, dated April 30, 1968, in regard to it.

The ACTING PRESIDENT pro tempore. The bill will be received and appropriately referred; and, without objection, the bill and letter will be printed in the RECORD.

The bill (S. 3423) to provide for U.S. participation in the facility based on special drawing rights in the International Monetary Fund, and for other purposes, introduced by Mr. FULBRIGHT, by request, was received, read twice by its title, referred to the Committee on Foreign Relations, and ordered to be printed in the RECORD, as follows:

S. 3423

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Special Drawing Rights Act."

SEC. 2. The President is hereby authorized (a) to accept the Amendment to the Articles of Agreement of the International Monetary Fund (hereinafter referred to as the "Fund"), attached to the April 1968 Report by the Executive Directors to the Board of Governors of the Fund, for the purpose of (i) establishing a Facility Based on Special Drawing Rights in the Fund and (ii) giving effect to certain modifications in the present rules and practices of the Fund, and (b) to participate in the Special Drawing Account established by the Amendment.

SEC. 3. (a) Special Drawing Rights allocated to the United States pursuant to Article XXIV of the Articles of Agreement of the Fund, and Special Drawing Rights otherwise acquired by the United States, shall be credited to the account of, and administered as part of, the Exchange Stabilization Fund established by Section 10 of the Gold Reserve Act of 1934, as amended (31 U.S.C. 822a).

(b) The proceeds resulting from the use of Special Drawing Rights by the United States, and payments of interest to the United States pursuant to Article XXVI, Article XXX, and Article XXXI of the Articles of Agreement of the Fund, shall be deposited in the Exchange Stabilization Fund. Currency payments by the United States in return for Special Drawing Rights, and payments of charges or assessments pursuant to Article XXVI, Article XXX, and Article XXXI of the Articles of Agreement of the Fund, shall be made from the resources of the Exchange Stabilization Fund.

SEC. 4. (a) The Secretary of the Treasury is authorized to issue to the Federal Reserve Banks, and such Banks shall purchase, Special Drawing Right certificates in such form and in such denominations as he may determine, against any Special Drawing Rights held to the credit of the Exchange Stabilization Fund. Such certificates shall be issued and remain outstanding only for the purpose of financing the acquisition of Special Drawing Rights or for financing exchange stabilization operations. The amount of Special Drawing Right certificates issued and outstanding shall at no time exceed the value of the Special Drawing Rights held against the Special Drawing Right certificates. The proceeds resulting from the issuance of Special Drawing Right certificates shall be covered into the Exchange Stabilization Fund.

(b) Special Drawing Right certificates owned by the Federal Reserve Banks shall be redeemed from the resources of the Exchange Stabilization Fund at such times and in such amounts as the Secretary of the Treasury may determine.

SEC. 5. (a) The third sentence of the second paragraph of Section 16 of the Federal Reserve Act, as amended (12 U.S.C. 412), is amended by inserting "or Special Drawing Right certificates," after "gold certificates,".

(b) The first sentence of the fifth paragraph of Section 16 of the Federal Reserve Act, as amended (12 U.S.C. 415), is amended by inserting "Special Drawing Right certificates," after "gold certificates,".

(c) The seventh paragraph of Section 16 of the Federal Reserve Act, as amended (12 U.S.C. 417), is amended by (i) inserting ", Special Drawing Right certificates," after "gold certificates" in the first sentence; (ii) inserting "Special Drawing Right certificates," after "gold certificates," in the second sentence; and (iii) inserting "and Special Drawing Right certificates" after "gold certificates" in the third sentence.

(d) The fifteenth paragraph of Section 16 of the Federal Reserve Act, as amended (12 U.S.C. 467), is amended by inserting (i) "or of Special Drawing Right certificates" after "gold certificates" in the first sentence, and (ii) by striking the third sentence and inserting in lieu thereof "Deposits so made shall be held subject to the orders of the Board of Governors of the Federal Reserve System and deposits of gold or gold certificates shall be payable in gold certificates, and deposits of Special Drawing Right certificates shall be payable in Special Drawing Right certificates, on the order of the Board of Governors of the Federal Reserve System to any Federal Reserve bank or Federal Reserve agent at the Treasury or at the Subtreasury of the United States nearest the place of business of such Federal Reserve bank or such Federal Reserve agent."

SEC. 6. Unless Congress by law authorizes such action, neither the President nor any person or agency shall on behalf of the United States vote to allocate Special Drawing Rights under Article XXIV, Sections 2 and 3, of the Articles of Agreement of the Fund so that net cumulative allocations to the United States exceed an amount equal to the United States quota in the Fund as heretofore authorized under the Bretton Woods Agreements Act of 1945, as amended (31 U.S.C. 822a(c), 22 U.S.C. 286e, 286e–1(a), 286e–1(b).

SEC. 7. The provisions of Article XXVII(b) of the Articles of Agreement of the Fund shall have full force and effect in the United States and its territories and possessions when the United States becomes a participant in the Special Drawing Account.

The letter presented by Mr. FULBRIGHT is as follows:

THE SECRETARY OF THE TREASURY,
Washington, April 30, 1968.

Hon. HUBERT H. HUMPHREY,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: There is transmitted herewith a proposed bill "To provide for United States participation in the Facility Based on Special Drawing Rights in the International Monetary Fund and for other purposes".

This legislation implements the recommendations made by President Johnson in his Message transmitted to the Congress today on the Proposed Amendment to the Articles of Agreement of the International Monetary Fund for the purpose of (i) establishing a Facility based on Special Drawing Rights in the Fund and (ii) giving effect to certain modifications in the present rules and practices of the Fund.

A special report of the National Advisory Council on International Monetary and Financial Policies on the Proposed Amendment has been transmitted to you and to the Speaker of the House of Representatives.

It would be appreciated if you would lay the proposed bill before the Senate. An identical bill has been transmitted to the Speaker of the House of Representatives.

The Department has been advised by the Bureau of the Budget that the proposed legislation is in accordance with the President's program.

Sincerely yours,

HENRY H. FOWLER.

S. 3425—INTRODUCTION OF BILL RELATING TO DESIGNATION OF MONOMOY ISLAND AS A WILDERNESS AREA

Mr. BROOKE. Mr. President, no one will deny that certain natural areas of our environment must be preserved for ourselves and for posterity. One such area is to be found off the coast of Chatham, Mass.

Monomoy Island is a narrow sand barrier extending for 9 miles south of the elbow of Cape Cod. At its widest point it measures 1½ miles; at the narrowest, about a quarter of a mile. The island is inhabited by all kinds of wildlife—sea birds, reptiles, and small game. On June 1, 1944, the island became part of the Monomoy National Wildlife Refuge. No roads are maintained on the island; no bridges connect it with the mainland. It has no known resources other than the sand from which the island is made, and the beauty of its natural surroundings. It is a quiet, unspoiled preserve enjoyed solely by sportsmen, nature lovers, hikers, and campers.

Making the island into a wilderness area would not infringe upon the rights of any of those who presently enjoy its resources. No private holdings would be allowed there; but even now only 2 acres of the island's total land area of 2,600 acres are in private hands. The facilities would be maintained by the Department of the Interior, working in cooperation with the Department of the Army.

Today, I am pleased to introduce, with the senior Senator from Massachusetts [Mr. KENNEDY] a bill to designate Monomoy Island as a wilderness area. A companion bill is being introduced in the other body by Representative HASTINGS KEITH. I urge prompt consideration and passage of this legislation.

Mr. President, I ask unanimous consent that the statement of the senior Senator from Massachusetts in support of this legislation be printed at this point in the RECORD.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

MONOMOY NATIONAL WILDLIFE REFUGE

(Statement by Senator KENNEDY of Massachusetts)

It is with special pleasure that I cosponsor with Senator Brooke a bill designating certain lands in the Monomoy National Wildlife Refuge as wilderness area. This roadless and unspoiled island is eminently qualified as land to be included in the National Wilderness Preservation System under the Department of Interior's supervision.

A 2,600 acre, barrier beach island stands as a boundary between Nantucket Sound and the Atlantic Ocean. For nature lovers, hikers, conservationists, sportsman and other outdoor enthusiasts, its rugged and undeveloped terrain exists as an ideal human retreat and nature area for those who are willing to make the journey. For major population centers of the Northeast, this island will provide needed wilderness preservation—the only one within a 200 mile area.

This island will be readily accessible to the greater Boston and Cape Cod areas. I can think of no more fitting complement to the Cape Cod National Seashore, a project I have long supported, than the preservation of Monomoy wilderness status.

Finally, as a wildlife refuge, Monomoy island will provide needed protection and refuge for resting, feeding and nesting waterfowl, as well as for birds requiring this fragile island type habitat. It seems that the wilderness designation lies in the best interest of all concerned for this generation and those to come.

Therefore, I stand with the elected officials of Barnstable County, the people of Chatham and other adjoining towns, the Cape Cod Planning and Economic Development Commission and other recreation-conservation interests in seeking the speedy enactment of this legislation.

The ACTING PRESIDENT pro tempore. The bill will be received and appropriately referred.

The bill (S. 3425) to designate certain lands in the Monomoy National Wildlife Refuge, Barnstable County, Mass., as wilderness, introduced by Mr. BROOKE (for himself and Mr. KENNEDY of Massachusetts), was received, read twice by its title, and referred to the Committee on Interior and Insular Affairs.

S. 3426—INTRODUCTION OF RAIL SAFETY BILL

Mr. MAGNUSON. Mr. President, I introduce for myself and the Senator from Wyoming [Mr. MCGEE], at the request of the Secretary of Transportation for appropriate reference, a bill to authorize the Secretary of Transportation to establish safety standards, rules, and regulations for railroad equipment, trackage, facilities and operations, and for other purposes.

Over 2 years ago, on March 2, 1966, in introducing President Johnson's proposed legislation to establish a Department of Transportation, I called attention to that portion of the President's message which stated that no function of the new Department—no responsibility of its Secretary—will be more important than safety. By bringing together all transportation safety into a single agency, we could bring about the correlation of safety in all modes. At that time I pointed out that railroad accidents have been increasing, due, in part, to the fact that railroad equipment and facilities have not been inspected adequately.

In my testimony in support of the Department of Transportation legislation as leadoff witness before the Senate Government Operations Committee, I stressed that the creation of the new Department would represent a significant step toward reducing the tragic waste in human lives and economic resources from the rising toll of transportation accidents.

In the last 2 years, the National Traffic and Motor Vehicle Safety Act and the Highway Safety Act have become the law of the land. The Senate has passed the gas pipeline safety bill which is now awaiting House action. This year the Secretary of Transportation submitted proposed legislation to provide for a coordinated national safety program to reduce boating accidents, and deaths and injuries resulting therefrom. This proposal received the strong endorsement of President Johnson in his consumer message. Until now no program has been advanced to promote railroad safety.

In three recently published reports the National Transportation Safety Board of the Department of Transportation has called attention to gaps in railroad safety.

On January 15, 1968, the Safety Board issued its report on a tragic rail-highway grade crossing accident in Sacramento, Calif., urging study of booby-trap rail crossings. On January 24, 1968, the Safety Board issued its report on a fatal head-on collision of two New York Central Railroad freight trains in New York City, calling upon the rail industry to reappraise and take corrective actions to improve safety. It also urged the Federal Railroad Administration to weigh the safety problems posed by this accident in their consideration of legislation before Congress which would give the Department more regulatory authority in the field of railroad safety. On March 7, 1968, the Safety Board issued its report on a rail-highway grade crossing accident in Everett, Mass. It recommended that the Department of Transportation seek legislation to authorize the Federal Railroad Administrator to prescribe reg-

ulations requiring first, emergency means of escape from railroad passenger cars, and second, emergency lighting for such cars.

On April 10, the Safety Board formally recommended to the Federal Railroad Administration that consideration be given to supporting or proposing Federal legislation which would provide additional safety regulatory authority for the Department of Transportation in the railroad safety field.

The Safety Board cited statistics which indicated that total train accidents in 1967 were up 71 percent from 1961. Train accidents per million train-miles increased nearly 60 percent from 1961 to 1966. Deaths in train accidents increased by 35.4 percent. Last year, according to Department of Transportation statistics, over 24,000 persons were injured, and nearly 2,500 killed in railroad accidents. Reported loss and damage to lading in train accidents, increased during the 1961 to 1966 period over 100 percent—from $9.3 million to $18.6 million. Track and equipment damage reported in train accidents during that same period increased from $50.4 million to $99 million—also nearly a 100-percent increase.

On the same day the Safety Board made its recommendation, I asked the Federal Railroad Administration of the Department of Transportation to make an immediate report to the Congress on the steps needed to halt the increasing frequency of railroad accidents. I indicated then that the Commerce Committee would plan to schedule early oversight hearings on railroad safety. Today's bill is their response, and the committee plans to hold early hearings on this proposal to decrease the number and seriousness of railroad accidents.

Most of the existing rail safety statutes were enacted from 50 to 75 years ago when technology was quite different. These outmoded statutes are limited to particular hazards, and they contain broad gaps. The Department of Transportation at present has no jurisdiction over the design, construction, inspection, or maintenance of track, roadway, and bridges. Its authority with respect to freight and passenger cars applies only to safety appliances and certain aspects of the brake systems. Car wheels and axles, which are major causative elements in many accidents, are not subject to Federal regulation.

The time has come to close these gaps by granting the Department overall authority to set standards dealing with the safety of railroad cars, track and related facilities, and train operations. As the Secretary points out, cost and competitive factors can frequently work to forestall improvements in the safety field. Frequently the cost of increased safety is a cost which will be borne reluctantly unless it falls evenly upon each member of the industry. Secretary Boyd correctly states that strong and uniform Federal regulation appears to be the only way this competitive deterrent to increased safety can be overcome.

The Secretary of Transportation, the Federal Railroad Administrator, and the National Transportation Safety Board are to be commended for recommending modernized rail safety legislation for the purpose of closing a major gap in the transportation safety statutes.

I ask unanimous consent that the text of the bill, the letter of transmittal from the Secretary of Transportation, the section-by-section analysis of the bill, and the National Transportation Safety Board letter of April 3, 1968, be printed in the RECORD at the conclusion of my remarks.

The ACTING PRESIDENT pro tempore. The bill will be received and appropriately referred; and, without objection, the bill, section-by-section analysis, and letters will be printed in the RECORD.

The bill (S. 3426) to authorize the Secretary of Transportation to establish safety standards, rules and regulations for railroad equipment, trackage, facilities, and operations, and for other purposes, introduced by Mr. MAGNUSON (for himself and other Senators), by request, was received, read twice by its title, referred to the Committee on Commerce, and ordered to be printed in the RECORD, as follows:

S. 3426

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Railroad Safety Act of 1968".

DEFINITIONS

SEC. 2. As used in this Act, unless the context otherwise requires—

(1) "Board" means the National Transportation Safety Board.

(2) "Chairman" means the Chairman of the National Transportation Safety Board.

(3) "Department" means the Department of Transportation.

(4) "Person" means any individual, firm, co-partnership, corporation, company, association, joint-stock association, or body politic; and includes any trustee, receiver, assignee, or other similar representative thereof.

(5) "Railroad" means any contrivance now known or hereafter invented, used or designed for operating on, along or through a track, monorail, tube, or other guideway.

(6) "Rail commerce" means any operation by railroad in or affecting interstate or foreign commerce or the transportation of mail by railroad.

(7) "Rail carrier" means any person who engages in rail commerce.

(8) "Rail facilities and equipment" include, without limitation, trackage, roadbed and guideways, and any facility, building, property, locomotive, rolling stock, device, equipment, or appliance used or designed for use in rail commerce, and any part or appurtenance of any of the foregoing.

(9) "Secretary" means the Secretary of Transportation.

FEDERAL SAFETY REGULATION

SEC. 3. (a) The Secretary is empowered and it shall be his duty to promote safety in rail commerce by prescribing, and revising from time to time—

(1) Minimum standards governing the use, design, materials, workmanship, installation, construction, and performance of rail facilities and equipment;

(2) Rules, regulations, and minimum standards governing the use, inspection, testing, maintenance, servicing, repair, and overhaul of rail facilities and equipment, including frequency and manner thereof and the equipment and facilities required therefor; and

(3) Rules, regulations, or minimum standards, governing qualifications of employees, and practices, methods, and procedures of rail carriers as the Secretary may find necessary to provide adequately for safety in rail commerce.

(b) Within ninety days following the date of enactment of this Act, the Secretary shall prescribe as interim Federal rail safety regulations the specific safety requirements prescribed in or under the statutes repealed by section 13. The interim regulations shall remain in effect for two years or until modified, terminated, superseded, set aside or repealed by the Secretary, whichever is earlier. The provisions of the Administrative Procedure Act shall not apply to the establishment of interim regulations. In construing any interim regulation, all orders, determinations, delegations, rules, regulations, standards, requirements, permits, and privileges which (1) have been issued, made, granted, or allowed to become effective under the statute from which that standard is derived and (2) are in effect on the date of enactment of this Act, shall apply and continue to be applicable according to their terms until modified, terminated, superseded, set aside, or repealed by the Secretary in the exercise of authority vested in him by this Act, by any court of competent jurisdiction, or by operation of law.

(c) The Secretary may grant such exemptions from the requirements of any regulation prescribed under this Act as he considers to be in the public interest.

STATE REGULATION AND ENFORCEMENT

SEC. 4. A State may regulate safety in rail commerce, in a manner which does not conflict with any Federal regulation in the following areas and no others: (1) vertical and horizontal clearance requirements; (2) grade crossing protection (including grade separation) which relates to the location of new crossings, closing of existing crossings, the type of crossing protection required or permitted, and rules governing train blocking of crossings; (3) the speed and audible signals of trains while operating within urban and other densely populated areas; and (4) the installation or removal of industrial and spur tracks. In exercising the authority reserved by clause (4), nothing herein shall be interpreted to diminish any authority which the Interstate Commerce Commission may have to require its approval of such actions. Other State laws and regulations affecting safety in rail commerce will continue in full force and effect for a period of two years following the date of enactment of this Act, unless abrogated prior to that time by court order, State legislative or administrative action, or by regulations issued by the Secretary.

PROHIBITIONS

SEC. 5. (a) No person shall—

(1) fail to comply with any applicable standard, rule, or regulation established or continued in effect pursuant to this Act; or

(2) fail or refuse access to or copying of records, or fail to make reports or provide information, or fail or refuse to permit entry or inspection, as required under section 9.

(b) Compliance with any standard, rule, or regulation established under this Act does not exempt any person from any liability which would otherwise accrue, except to the extent that the action creating the liability was specifically compelled by any such standard, rule, or regulation.

PENALTIES

SEC. 6. (a) Any person who violates any provision of section 5 shall be subject to a civil penalty of not less than $250 nor more than $1,000 for each violation. If the violation is a continuing one, each day of such violation shall constitute a separate offense. Any person who knowingly and willfully violates any such provision shall be fined not more than $10,000 or imprisoned not more than one year, or both. Imposition

of any punishment under this section shall be in lieu of whatever civil penalty might otherwise apply.

(b) The civil penalties provided in this section may be compromised by the Secretary. The amount of any penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged.

(c) Whoever forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person engaged in the performance of inspection or investigatory duties under this Act, or on account of the performance of such duties, shall be fined not more than $5,000 or imprisoned not more than three years, or both. Whoever, in the commission of any such acts, uses a deadly or dangerous weapon shall be fined not more than $10,000 or imprisoned not more than ten years, or both. Whoever kills any other person engaged in the performance of inspection or investigatory duties under this Act, or on account of the performance of such duties, shall be punished as provided under sections 1111 and 1112 of title 18, United States Code.

INJUNCTIVE RELIEF

SEC. 7. (a) The United States district courts shall have jurisdiction, subject to the provisions of rule 65 (a) and (b) of the Federal Rules of Civil Procedure, to restrain violations of this Act (including the restraint of operations in rail commerce) or to enforce standards, rules, or regulations established hereunder, upon petition by the appropriate United States attorney or the Attorney General on behalf of the United States. Whenever practicable, the Secretary shall give notice to any person against whom an action for injunctive relief is contemplated and afford him an opportunity to present his views, and, except in the case of a knowing and willful violation, shall afford him reasonable opportunity to achieve compliance. However, the failure to give such notice and afford such opportunity shall not preclude the granting of such relief.

(b) In any proceeding for criminal contempt for violation of an injunction or restraining order issued under this section, which violation also constitutes a violation of this Act, trial shall be by the court or, upon demand of the accused, by a jury. Such trial shall be conducted in accordance with the practice and procedure applicable in the case of proceedings subject to the provisions of rule 42(b) of the Federal Rules of Criminal Procedure.

(c) Actions under this Act may be brought in the district wherein any act or transaction constituting the violation occurred, or in the district wherein the defendant is found or is an inhabitant or transacts business, and process in such cases may be served in any other district of which the defendant is an inhabitant or transacts business or wherever the defendant may be found.

(d) In any action brought under this Act, subpenas for witnesses who are required to attend a United States district court may run into any other district.

DESIGNATION OF AGENT FOR SERVICE

SEC. 8. It shall be the duty of every rail carrier to designate in writing an agent upon whom service of all administrative and judicial processes, notices, orders, decisions and requirements may be made for and on behalf of said rail carrier and to file such designation with the Secretary, which designation may from time to time be changed by like writing, similarly filed. Service of all administrative and judicial processes, notices, orders, decisions, and requirements may be made upon said rail carrier by service upon such designated agent at his office or usual place of residence with like effect as if made personally upon said rail carrier, and in default of such designation of such agent, service of process, notice, order, decision, or requirement in any proceeding before the Secretary or in any judicial proceeding for enforcement of this Act or any rule, regulation, or standard prescribed pursuant to this Act may be made by posting such process, notice, order, decision, or requirement in the Office of the Secretary.

RECORDS AND REPORTS

SEC. 9. (a) Every rail carrier shall establish and maintain such records, make such reports, and provide such information as the Secretary may reasonably require to enable him to determine whether such carrier has acted or is acting in compliance with this Act and rules, regulations, and standards issued thereunder, and to otherwise carry out his responsibilities under this Act. Each such rail carrier shall, upon request of an officer, employee, or agent authorized by the Secretary, permit such officer, employee, or agent to inspect and copy books, papers, records, and documents relevant to determining whether such person has acted or is acting in compliance with this Act and orders, rules, and regulations issued thereunder.

(b) To carry out the Board's and the Secretary's responsibilities under this Act, officers, employees, or agents authorized by the Secretary or Chairman, upon display of proper credentials, are authorized at all times to enter upon, inspect and examine rail facilities and equipment.

(c) All information reported to or otherwise obtained by the Secretary or the Board or their representatives pursuant to subsection (a) containing or relating to a trade secret or other matter referred to in section 1905 of title 18 of the United States Code, shall be considered confidential for the purpose of that section, except that such information may be disclosed to other officers, employees, or agents concerned with carrying out this Act or when relevant in any proceeding under this Act. Nothing in this section shall authorize the withholding of information by the Secretary, Chairman, or any officer or employee under their control, from the duly authorized committees of the Congress.

GENERAL POWERS

SEC. 10. (a) The Secretary is authorized to conduct, or contract with individuals, States, or non-profit institutions for the conduct of, research, development, testing, evaluation, and training as necessary to carry out the provisions of this Act.

(b) The Secretary may, subject to such regulations, supervision, and review as he may prescribe, delegate to any qualified private person, or to any employee or employees under the supervision of such person, any work, business, or function respecting the examination, inspection, and testing necessary to carry out his responsibilities under this Act.

(c) The Secretary is authorized to advise, assist, and cooperate with other Federal departments and agencies and State and other interested public and private agencies and persons, in the planning and development of (1) Federal rail safety standards, rules, and regulations, and (2) methods for inspecting and testing to determine compliance with Federal rail safety standards, rules, and regulations.

(d) The Secretary is empowered to perform such acts, to conduct such investigations, to issue such subpenas, to take such depositions, to issue and amend such orders, and to make and amend such special rules and regulations as he shall deem necessary to carry out the provisions of, and to exercise and perform his powers and duties under this Act.

ACCIDENT INVESTIGATION

SEC. 11. (a) The Secretary is authorized to conduct investigations of any accident occurring in rail commerce, and may invite participation by State agencies.

(b) The Board shall have the authority to determine the cause or probable cause and report the facts, conditions, and circumstances relating to accidents investigated under subsection (a) above, but may delegate such authority to any officer or official of the Board or to any officer or official of the Department, with the approval of the Secretary, as it may determine appropriate.

(c) No part of any report required of a rail carrier under this Act, or any report made to the Secretary by an employee of the Department, or any report of the Secretary or the Board, relating to any accident or the investigation thereof, shall be admitted as evidence or be used in any suit or action for damages growing out of any matter mentioned in such report or reports. Employees of the Board or Department who have engaged in the investigation of a railroad accident shall not give expert or opinion testimony concerning such accidents in any such suit or action. Factual testimony of Board or Department personnel on matters observed in accident investigation shall be required only where the Chairman or the Secretary initially, or the Court before which such suit or action is pending, determines that the evidence is not available by other means. Unless otherwise ordered by the Court, such factual testimony shall be taken only by deposition upon oral examination or written interrogatories, pursuant to regulations issued by the Secretary or the Board.

USE OF STATE SERVICES

SEC. 12. The Secretary is authorized to enter into agreements with appropriate State agencies for the provision of inspection and surveillance services as necessary to effective enforcement of Federal rail safety regulations. State services may be procured on such terms and conditions as the Secretary may prescribe and may be reimbursed from any appropriations available for expenditure under this Act. The Secretary may delegate to an officer of such State, and authorize successive redelegation of, any authority under this Act necessary to the conduct of an effective enforcement program.

STATUTES REPEALED—SAVINGS PROVISION

SEC. 13. (a) The Safety Appliance Acts including the Power or Train Brakes Safety Appliance Act of 1958 (45 U.S.C. 1–16), the Ash Pan Act (45 U.S.C. 17–21), the Locomotive Inspection Act (45 U.S.C. 22–34), the Accident Reports Act (45 U.S.C. 38–43), and the Signal Inspection Act (49 U.S.C. 26) are repealed as of the effective date of the interim regulations required to be promulgated by section 3(b) of this Act.

(b) No suit, action, or other proceeding and no cause of action under the statutes repealed by this Act shall abate by reason of enactment of this Act.

APPROPRIATION AUTHORIZATION

SEC. 14. There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

SEPARABILITY

SEC. 15. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances shall not be affected thereby.

The letters and section-by-section analysis, presented by Mr. MAGNUSON, are as follows:

THE SECRETARY OF TRANSPORTATION,
Washington, D.C., April 29, 1968.

HON. HUBERT H. HUMPHREY,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: There is transmitted herewith a proposed bill "To authorize the

Secretary of Transportation to establish safety standards, rules, and regulations for railroad equipment, trackage, facilities, and operations, and for other purposes", together with a section-by-section analysis.

This proposed legislation would replace the piecemeal statutory scheme for Federal rail safety regulation with a comprehensive statute authorizing the Secretary of Transportation to promulgate safety requirements relating to locomotives, rolling stock, trackage and roadbed, equipment, appliances, and facilities used in railroad operations in or affecting interstate or foreign commerce.

Most of the existing rail safety statutes, responsibility for which was transferred from the Interstate Commerce Commission to this Department at the time of its creation, were enacted from 50 to 75 years ago at a time prior to the emergence of the dramatic new transportation technology in which the railroads share. Only a few of the most obvious of safety problems are addressed and each statute is limited to particular hazards. In contrast, the more modern safety statutes establish desired safety results, leaving the exact manner of achievement to administrative regulation which can more easily accommodate technological progress.

In enacting more recent Federal transportation and other safety statutes—such as aviation, motor vehicle, and highway safety—Congress has followed the principle of vesting in the head of regulatory agencies and departments broad authority to prescribe safety standards, based upon continuing research programs and upon the changing technological needs of the regulated industry. The proposed bill is intended to move Federal railroad safety regulation in this direction. It will permit the Federal Government to bring modern analytical principles to bear on the identification and solution of rail safety hazards.

Not only do existing statutes prescribe, in many cases, rigid and unrealistic requirements, some important areas are now beyond the scope of Federal rules, regulations, and standards and, therefore, beyond the reach of a uniform, comprehensive safety program. For example, the Department has no jurisdiction over the design, construction, inspection, or maintenance of track, roadway, and bridges. Its authority with respect to freight and passenger cars is scant and applies only to a small part of the vehicle, namely, to safety appliances and certain aspects of the brake systems. Car wheels and axles, which are major causative elements in many accidents, are not subject to Federal regulation. Thus, overall authority for the safety performance of the railroad car as a unit does not exist as it does in Federal statutes regulating aircraft and motor vehicles. Moreover, there is almost no safety regulatory authority extending to the operation of the trains themselves.

The Department's concern is not limited to the desirability of modern administration of rail safety requirements. We are also concerned with the increasing number and severity of railroad accidents attributable to causes beyond the reach of existing safety statutes. Derailment, for example, which is the most frequent type of accident, can often be attributed to wheels, axles, or track condition over which there is no present Federal authority.

In the past seven years, the monthly average of train accidents has increased steadily from 341 in 1961 to an estimated 590 for 1967. One logical result of this increase in accidents has been an increase in casualty rates per million man-hours worked during the same period.

In proposing new legislation, the Department does not suggest that the railroad industry is insensitive to its responsibility for safe operations. As with other transportation modes, however, cost and competitive pressures can frequently work at cross purposes to safety. The cost of greater safety will be borne reluctantly unless it is a burden which falls evenly on each member of the industry. Uniform Federal regulation is the only way industry can be assured of this.

The bill which the Department proposes would give the Secretary of Transportation authority to prescribe standards for construction, use, design, and performance of trackage, locomotives, rolling stock, and facilities, and to prescribe the manner and frequency with which testing and inspection for compliance is to be performed. The Secretary would also have authority to regulate the qualifications of rail employees, and practices, methods, and procedures of rail carriers, as required in the interests of safety. This would include all safety aspects of crew employment, except as to hours of service.

While the bulk of existing Federal safety statutes would be repealed, the requirements now prescribed in or under these laws would remain in effect as interim standards for up to two years to allow the Secretary time to, by study and research, develop new and more comprehensive standards.

Because uniformity in the regulation of rail safety is generally necessary and desirable, the bill would preempt the area from State regulation with some specified exceptions. These areas include vertical and horizontal clearance requirements, certain aspects of grade crossing protection, and speed and audible signals of trains within urban or other densely populated areas. Even in the excepted areas, a State could not regulate in conflict with Federal regulations.

Federal preemption of rail safety regulation will not have a great effect in most States. While historically some States have contributed to safer rail operations through activity in selected areas, only a few States have substantial rail safety programs. The bill will enable those few States to concentrate their activities in the excepted areas.

The bill authorizes the Secretary to utilize the services of State agencies in conducting inspection and surveillance activities necessary to enforcement of Federal regulations. The Secretary may reimburse a State agency for the cost of providing such services from any funds available for administration of the rail safety program.

The Secretary would have authority to require reports of the carriers necessary to the discharge of his duties under the bill, including the authority to investigate rail accidents. However, the authority which the National Transportation Safety Board now has to determine and report the cause or probable cause of rail accidents, and to delegate its authority to perform various functions, would be preserved.

The bill would provide penalties for any failure to comply with applicable standards, rules, or regulations, or to cooperate in the various recordkeeping and inspections requirements which the Secretary would be authorized to impose. The Government should have available to it the full range of sanctions from which to choose in insuring compliance with the bill. For this reason the bill provides for injunctive relief, as well as civil and criminal penalties. The latter would be imposed only for knowing and willful violations.

In summary, the time has come to revise the outmoded legislative structure supporting rail safety. The enclosed bill would do this and place regulation of the Nation's railroads on substantially the same footing as aviation and highway safety regulations.

The Bureau of the Budget has advised that enactment of this proposed legislation is in accord with the President's program.

Sincerely,

ALAN S. BOYD.

SECTION-BY-SECTION ANALYSIS OF A BILL TO AUTHORIZE THE SECRETARY OF TRANSPORTATION TO ESTABLISH SAFETY STANDARDS, RULES, AND REGULATIONS FOR RAILROAD EQUIPMENT, TRACKAGE, FACILITIES, AND OPERATIONS, AND FOR OTHER PURPOSES

Section 1.—This section provides that the Act may be referred to as the "Federal Railroad Safety Act of 1968".

Section 2.—This section defines the operative words employed in the Act. The standards and regulations authorized by the Act would apply to persons engaged in rail commerce, defined as "any operation by railroad in or affecting interstate or foreign commerce or the transportation of mail by railroad".

Railroad, in turn, means "any contrivance now known or hereafter invented, used or designed for operating on, along or through a track, monorail, tube, or other guideway".

The rail facilities and equipment which would be subject to regulation include trackage, roadbed and guideways, and any facility, building, property, locomotive, rolling stock, device, equipment, or appliance used or designed for use in roil commerce.

Section 3.—This section authorizes and directs the Secretary of Transportation to promote safety in rail commerce by prescribing (1) minimum standards for use, design, materials, workmanship, installation, construction, and performance of rail facilities and equipment; (2) rules, regulations, and minimum standards for use, inspection, testing, and the like, for equipment and facilities to be used in such inspection and testing, and for the periods and manner in which such testing and inspection are to be accomplished; and (3) rules, regulations, or other standards governing qualifications of employees and practices, methods, and procedures of rail carriers where required for safety in rail commerce.

While the standards and regulations described in subsection 3(a) are being developed, interim standards will be applicable. The Secretary must prescribe interim standards within ninety days of enactment of this Act, which standards are to be the requirements currently in force under existing rail safety statutes. Most of the existing safety statutes will be repealed, pursuant to section 13, concurrent with establishment of interim standards. Interim standards will remain in effect for two years, unless sooner changed or repealed by action of the Secretary.

This section also contains a provision permitting the Secretary to grant exemptions, if such actions would be in the public interest.

Section 4.—This section authorizes the States to regulate in certain specified areas, in a manner not in conflict with Federal regulation. Further, unless they are sooner superseded by the courts, State action, or regulations issued by the Secretary, other State laws relating to rail safety may remain in full force and effect for a period of two years after the date of enactment of this Act.

Section 5.—This section requires persons subject to the Act to comply with all applicable standards, rules, and regulations issued thereunder and, as specified in section 9, requires them to grant access to company records, furnish required reports and information, and allow entry upon and inspection of carrier facilities. Compliance with any standard, rule, or regulation established under the Act will not exempt any person from any liability which would otherwise accrue unless the action creating the liability was specifically compelled by the standard, rule, or regulation.

Section 6.—This section provides a civil penalty of not less than $250 or more than $1,000 per day for each violation of the Act or regulations issued under it. These may be compromised by the Secretary and deducted from any amounts owing to the carrier by the United States.

The section further provides criminal penalties of up to $10,000 fine and up to one year's imprisonment, or both, for every knowing and willing violation of such a provision, as well as criminal penalties for the assault or killing of any person who is engaged in the performance of official duties under the Act. These penalties are the same as those provided for the same offenses in title 18, United States Code. If a criminal penalty is imposed, a civil penalty cannot be pursued for the same violation.

Section 7. This section authorizes the Secretary to obtain injunctive relief to enforce standards, rules, and regulations issued under the Act. Wherever it is practicable, the Secretary is to give notice of his intention to seek an injunction in order to give the person who is in violation an opportunity to come into compliance.

In contempt proceedings for violation of an injunction or restraining order, where the act which constitutes the violation is also a violation of the act, the accused has the option of trial by the court or before a jury.

This section also provides for the venue of actions brought under the Act and provides that subpenas in such cases may run outside the districts in which they are issued.

Section 8.—This section requires that every rail carrier designate, by filing in writing with the Secretary, an agent upon whom all service in administrative and judicial proceedings may be made for and on behalf of the carrier. If any carrier fails to file such a designation, valid service may be made upon that carrier simply by posting in the Office of the Secretary a copy of the material to be served.

Section 9.—This section confers certain powers on the Secretary to facilitate his duties under the Act by (1) requiring carriers to maintain records, to make reports of accidents and other reports, and to provide the Secretary with information, (2) requiring carriers to permit the inspection of books, papers, records, and documents, and (3) permitting properly identified officers, employees, and agents to enter upon and inspect carrier premises. Any trade secrets which may come into the possession of the Secretary or his representatives through the exercise of these powers may not be disclosed except to persons concerned with carrying out the Act or when relevant in a proceeding under the Act.

Section 10.—This section grants to the Secretary a series of general powers which he must have to effectively discharge his duties under the Act. They are the powers to: (1) conduct or contract for research, development, testing, evaluation, and training; (2) delegate to qualified private persons activities relating to examination, inspection, and testing; (3) cooperate with various Federal and non-Federal agencies in developing safety standards, rules, and regulations, and methods for inspecting and testing to determine compliance; and (4) conduct investigations, issue subpenas, take depositions, and issue necessary orders and special rules and regulations.

Section 11.—This section authorizes the Secretary to investigate accidents occurring in rail commerce and to invite State participation. Since certain of the rail accident authority of the National Transportation Safety Board derives from statutes which are repealed by section 13, this section confirms that the NTSB will continue to have its sole authority to report facts, conditions, and circumstances of rail accidents, make findings of probable cause, and to delegate such of its authority as it may wish to its employees, to the Secretary, or to officials of the Department of Transportation. That is, the NTSB will continue to enjoy the powers, duties, and responsibilities with respect to rail accidents that it now has by virtue of section 5 of the Department of Transportation Act.

The section provides that no reports required to be made by carriers or made by the Secretary or the Board may be used in any lawsuit arising out of matters mentioned in such reports. It also provides that investigators may testify only as to facts, and may not give expert or opinion testimony.

Section 12.—This section authorizes the Secretary to contract with State agencies for the provision of inspection and surveillance services necessary to enforcement of Federal safety regulations. The reimbursement of State costs may be made from appropriations available for carrying out the rail safety program.

Section 13.—This section enumerates the existing Federal rail safety statutes which will be repealed. These laws are, for the most part, outdated and requirements written into statute will be replaced with comprehensive regulatory authority placed in the Secretary by this Act. The repeals would be effective simultaneously with establishment of interim standards under section 3(b) so that there would be no hiatus in Federal safety regulation. Any litigation now pending as a result of these statutes would not be terminated, however, simply because of their repeal.

Section 14.—This section authorizes the appropriation of such sums as may be necessary to carry out the provisions of the Act.

Section 15.—This section provides for separability.

APRIL 3, 1968.

Hon. A. SCHEFFER LANG,
Administrator, Federal Railroad Administration, Department of Transportation, Washington, D.C.

DEAR MR. LANG: The National Transportation Safety Board's review of data covering the last several years for train accidents shows progressively worsening trends in rates, occurrences, deaths, and damage. Furthermore, and especially disturbing, many train accidents in recent years have involved hazardous or poisonous materials, resulting in fires, or the escape of poisonous or hazardous materials followed by evacuation of populated areas. The latter collateral factors, coupled with a rising accident rate, increase the probability of catastrophic occurrences.

Total train accidents [1] increased from 4,149 in 1961 to 6,793 in 1966, up 63.7%, and according to preliminary figures increased to 7,089 in 1967, up 71% over 1961. Train accidents per million train-miles increased from 7.09 in 1961 to 11.29 in 1966, up 59.2%. Deaths in train accidents increased from 158 to 214, or by 35.4%. Reported loss and damage to lading in train accidents (which excludes rough handling) increased from $9.3 million to $18.6 million during the 1961–1966 period, or up 100%; such loss and damage was up from $15,800 to $30,900 per million train-miles, or up 95.6%. Track and equipment damage reported in train accidents increased from $50.4 million to $99.0 million, up almost 100%; such track and equipment damage was up from $86,200 to $164,500 per million train-miles, or up 90.9%.

Derailments, the single most important cause of train accidents, increased from 2,671 in 1961 to 4,447 in 1966, up 66.5%, and the rate of derailments per million train-miles increased from 4.57 in 1961 to 7.39 in 1966, up 61.7%. Derailments, as the largest single cause of the 6,793 train accidents in 1966, accounted for 4,447 or about 65% of all train accidents in 1966, and over 80% of the damage to track and equipment. Collisions, the next most frequent cause, accounted for 1,552 or 23% of 1966 train accidents.

The Interstate Commerce Commission's "Accident Bulletin", now under jurisdiction of the Federal Railroad Administration, reflects in detail the primary causes of derailments, comparing 1961 with 1966. (See Exhibit A.) Defects in or improper maintenence of way and structures accounted for 21.6% of all derailments in 1961 and this increased to 31.2% in 1966. Further, both in numbers and proportion of total derailments, those caused by defects in or improper maintenance of way and structures have become an increasingly significant factor in derailments, increasing by 140% and by 44.5%, respectively. Defects in or failure of equipment, on the other hand, though still the largest group of causes of derailments, had declined as a proportion of derailment causes from 47.5% in 1961 to 34.9% in 1966. Derailments charged to negligence of employees accounted for 12.3% of all derailments in 1961 and 12.4% in 1966, almost the same proportion, although the number of derailments caused by employee negligence increased by 68.1%.

Statistics as to derailments resulting from defects in or improper maintenance of way and structures, which resulted in train accidents, are set forth in detail in Exhibit B. It clearly shows how progressively deteriorating track conditions are causing derailments.

The railroad accident picture is extremely serious. Furthermore, higher speeds, longer and heavier trains, and the growing carriage of deadly and hazardous materials may well increase the already serious consequences of unsafe practices.

We are sure you are aware of the disquieting picture described in this letter, and concur in the view we hold that every reasonable step be taken to arrest and reverse the trend toward increasing incidence of train accidents. Recognizing that there are limits both to your resources and your authority, nonetheless we recommend that all available resources at your disposal be applied to reverse these accident trends. Increased attention to accident investigations and the issuance of more published accident investigation reports are several possibilities; others are increased inspections addressed to the worst areas of accident cause and to railroads where a disproportionate number of accidents occur.

Collaterally, we recommend that the Federal Railroad Administration initiate studies which would go beyond the data provided in current accident reports, with particular attention being given to derailments. Studies should include such factors as level of maintenance, types of inspection techniques used by railroads, influence of operating rules on accident causation, and employee responsibility for unsafe practices. Other areas deserving of attention or review include the use and value of railroad employee safety incentives, research and development to determine how management and employees, individually or jointly, can improve safety techniques and reduce accidents, and the possible borrowing and adaptation of successful safety practices from other transportation modes. The results of such studies should lead to initiation of new or augmented action programs by FRA to improve railroad safety.

We are aware that current regulatory authority does not encompass many areas related to the causes of many railroad accidents. Our concern about the state of railroad operations vis-a-vis safety was indicated in the recommendations accompanying our report on the railroad collision in New York City, where we stated that there is clear need for a reappraisal, a self-assessment and corrective action by the railroad industry.

We believe that the primary responsibility for improved railroad safety should rest upon railroad management and labor. However, we reiterate here that if it appears that they cannot or will not accept the challenge promptly to arrest the worsening railroad accident picture, consideration should be given to supporting or proposing Federal legislation which would provide additional safety regulatory authority for the Department of Transportation in the railroad safety field.

Sincerely,

JOSEPH J. O'CONNELL, Jr.,
Chairman.

[1] Excludes train-service and non-train accidents.

EXHIBIT A

	Number of derailments			Proportion of primary causes of derailments to total derailments (percent)			Derailments per million train-miles		
	1961	1966	Trend (percent)	1961	1966	Trend	1961	1966	Trend (percent)
Primary causes of derailments:									
Defects in or improper maintenance of way and structures	577	1,388	+140.0	21.6	31.2	+44.5	0.99	2.31	+133.0
Defects in or failure of equipment	1,268	1,550	+22.2	47.5	34.9	−26.5	2.17	2.58	+18.9
Negligence of employees	329	553	+68.1	12.3	12.4	+.8	.56	.92	+64.3
Other	497	956	+92.4	18.6	21.5	+15.6	.85	1.59	+87.1
Total derailments	2,671	4,447	+66.5				4.57	7.39	+61.7

EXHIBIT B

	1961		1966		Trends (percent)	
	Number of derailments	Proportion of total derailments (percent)	Number of derailments	Proportion of total derailments (percent)	Number of derailments	Proportion of total derailments
Defects in or failure of tie and/or tieplates	27	4.7	107	7.7	+296	+63.8
Improper track alinement	15	2.6	55	4.0	+266	+53.8
Defects in or failure of frogs and/or switches	93	16.1	267	19.3	+187	+19.9
Improper superelevation of track	24	4.2	60	4.3	+150	+2.4
Defects in or failure of rails and/or rail joints	326	56.5	661	47.6	+103	−15.8
Other	92	15.9	238	17.1	+159	+7.5
Total	577	100.0	1,388	100.0	+140	

SENATE JOINT RESOLUTION 165—INTRODUCTION OF FAMILY REUNION DAY JOINT RESOLUTION

Mr. MUNDT. Mr. President, on behalf of myself, the Senator from Alabama [Mr. SPARKMAN], the Senator from Kansas [Mr. CARLSON], the Senator from Texas [Mr. TOWER], the Senator from Delaware [Mr. BOGGS], the Senator from Nebraska [Mr. HRUSKA], and the Senator from Arizona [Mr. FANNIN], I introduce for appropriate reference a joint resolution authorizing the President to proclaim August 11, 1968, as "Family Reunion Day."

Similar legislation has been introduced in the House of Representatives and I believe it only fitting and proper that we all get behind this effort to have the importance of family reunions publicized and honored.

The family is the basis of our society, the repository of that high morality and integrity without which a Nation cannot exist in these troubled times. In a society permeated by strife and civil disorder, the family remains the best hope of restoring respect and love of all mankind to the position it once held.

I sometimes think that the highly mobile nature of our Nation today, which tends to make family separation all too often a way of life, is working to destroy this basic unit in our society. No longer do we maintain family contact and experience the pride, the satisfaction, and the sense of security that comes with shared experiences and shared memories of family living. I would hope, therefore, that we would be able to set aside a day for family get-togethers, reunions, and similar activities designed to reemphasize the family, its history, and its shared plans for the future. Designation by the President for a Family Reunion Day would accomplish this objective.

Mr. President, it is with a certain amount of pride that I introduce this joint resolution on the Senate side on behalf of two organizations that have pushed this program on a volunteer basis among our populace. One is Kiwanis International, an organization in which I have been privileged to serve in the past as a district governor. I might add that the other cosponsors are also distinguished members of Kiwanis. The other is the Freedoms Foundation of Valley Forge, which we all know has played such an important role in developing and instilling in our people love and respect for America. I hope that all of my fellow Senators will lend their support to these two fine organizations and to this resolution.

The ACTING PRESIDENT pro tempore. The joint resolution will be received and appropriately referred.

The joint resolution (S.J. Res. 165) authorizing the President to proclaim August 11, 1968, as "Family Reunion Day," introduced by Mr. MUNDT (for himself and other Senators), was received, read twice by its title, and referred to the Committee on the Judiciary.

SENATE JOINT RESOLUTION 167—PROPOSED ADVISORY COMMISSION ON NUCLEAR PORT DEVELOPMENT

Mr. MAGNUSON. Mr. President, I introduce, for appropriate reference, a joint resolution to establish an Advisory Commission to study and report on the need for port facilities in the United States for commercial nuclear ships.

I believe the ports of the United States have done a truly outstanding job in providing the appropriate facilities to coordinate and utilize the rapid technological changes taking place in the maritime field. The container revolution is not just a revolution involving oceangoing facilities, trucks, trains, and planes. It is also a revolution dependent upon change in port facilities and cargo handling methods for it is the port that serves as the vital link in the attempt to expedite intermodal carriage of cargo.

As effective as containers may be in promoting sound transportation in the oceangoing field, there are dramatic new technological changes on the horizon—hopefully quite near—which will present unique and intricate development problems and challenges for the ports. I am thinking specifically of the changes that will occur with the development of a nuclear-powered merchant fleet. As you may know, I have long advocated this course of action in the Congress of the United States and have introduced a maritime program which would provide for the building of a fleet of nuclear vessels. And, of course, other nations—Japan, Italy, West Germany, Russia, and Communist China—are devoting time and money to developing nuclear vessels. It seems clear, therefore, that one of the major developments in the transportation field is going to be the utilization of nuclear-powered vessels.

We must look ahead and be prepared to take advantage of full implementation of new technological change to enhance our transportation posture. It is time, I believe, for us to begin thinking of the specific challenges that will be presented through the utilization of nuclear propulsion. It appears that an immediate requirement of commercial operation of a fleet of nuclear vessels will be that of providing port facilities for servicing such vessels. This is a matter which should be studied carefully so that the necessary facilities will be available to enhance and encourage use of nuclear vessels. This Commission, which would draw from all relevant governmental departments and affected industries, would undertake a full and complete study and investigation to determine: first, the type of port facilities necessary for commercial nuclear-powered ships; second, determine the need for such facilities on the east, west, gulf and Great Lakes coasts of the United States and recommend appropriate locations upon each such coast for nuclear port facilities; and, third, recommend appropriate Federal, States, and local government coordination and action for planning, developing, financing, and establishing standards for nuclear port facilities.

The Commission report would be submitted to the President and the Congress within 1 year so that we may move as rapidly as possible to fully develop our port facilities, thus assuring utilization and appropriate servicing for what will surely be the ships of the future.

I shall do my best to have this joint resolution enacted into law for I believe it vital not only to the appropriate development of our shipping potential but of vast benefit and importance to the ports and to the proper utilization of our expertise in the fields of atomic energy.

The ACTING PRESIDENT pro tempore. The joint resolution will be received and appropriately referred.

The joint resolution (S.J. Res. 167) to establish an Advisory Commission to study and report on the need for port facilities in the United States for commercial nuclear ships, introduced by Mr. MAGNUSON, was received, read twice by

its title, and referred to the Committee on Government Operations.

ADDITIONAL COSPONSORS OF BILLS AND RESOLUTION

Mr. YARBOROUGH. Mr. President, I ask unanimous consent that, at its next printing, the names of the Senators from New York [Mr. JAVITS and Mr. KENNEDY] and the senior Senator from Massachusetts [Mr. KENNEDY] be added as cosponsors of the bill (S. 3349) to amend the cold war GI bill, to improve on the farm, flight training, and general educational opportunities, to equal those granted to veterans of Korean conflict.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. MAGNUSON. Mr. President, I ask unanimous consent that, at its next printing, the name of the Senator from Hawaii [Mr. INOUYE] be added as a cosponsor of the bill (S. 1336) to amend the Internal Revenue Code of 1954 to allow a deduction from gross income for social agency, legal, and related expenses incurred in connection with the adoption of a child by the taxpayer.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that, at its next printing, the name of the Senator from Maryland [Mr. TYDINGS] be added as a cosponsor of the resolution (S. Res. 281) to establish a Select Committee on Nutrition and Human Needs.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

SENATE RESOLUTION 284—RESOLUTION TO COMMEMORATE THE 20TH ANNIVERSARY OF THE STATE OF ISRAEL

Mr. DIRKSEN (for himself, Mr. MANSFIELD, Mr. KUCHEL, Mr. GRIFFIN, Mr. PASTORE, Mr. JAVITS, Mr. COTTON, Mr. BYRD of West Virginia, Mr. YARBOROUGH, Mr. PERCY, Mr. PROUTY, Mr. CASE, Mr. RIBICOFF, Mr. SCOTT, Mr. INOUYE, Mr. SPONG, Mr. ALLOTT, Mr. BOGGS, Mr. MURPHY, Mr. CANNON, Mr. SYMINGTON, Mr. HRUSKA, Mr. CURTIS, Mr. BROOKE, and Mr. TOWER) submitted a resolution (S. Res. 284) to commemorate the 20th anniversary of the State of Israel, which was considered and agreed to.

(See the above resolution printed in full when submitted by Mr. DIRKSEN, which appears under a separate heading.)

SENATE RESOLUTION 285—RESOLUTION TO PRINT AS A SENATE DOCUMENT THE ANNUAL REPORT OF THE NATIONAL FOREST RESERVATION COMMISSION

Mr. ELLENDER submitted the following resolution (S. Res. 285); which was referred to the Committee on Rules and Administration:

S. RES. 285

Resolved, That the Annual Report of the National Forest Reservation Commission for the fiscal year ended June 30, 1967, be printed with an illustration as a Senate document.

AMENDMENT OF LEGISLATION RELATING TO HIGHER EDUCATION—AMENDMENTS

AMENDMENT NO. 709

Mr. MORSE. Mr. President, I submit, for appropriate reference, amendments to S. 3098, the Higher Education Act of 1968, which have been proposed to the chairman of the Senate Committee on Labor and Public Welfare by the Department of Health, Education, and Welfare by Acting Secretary Cohen under date of March 21.

I ask unanimous consent that the text of the proposed amendment be printed in the RECORD at this point together with the text of the transmittal letter containing the administration's justification for the proposed changes.

The ACTING PRESIDENT pro tempore. The amendment will be received, printed and appropriately referred; and, without objection, the amendment and the letter will be printed in the RECORD, as requested.

The amendment (No. 709) was referred to the Committee on Labor and Public Welfare, as follows:

On page 93, line 23, insert "(such as the Instructional Television Fixed Service)" immediately after the word "facilities".

On page 95, line 3, strike out the quotation marks.

On page 95, between lines 3 and 4, insert the following:

"'AUTHORITY FOR FREE OR REDUCED RATE COMMUNICATIONS INTERCONNECTION SERVICES

"'SEC. 803. Nothing in the Communications Act of 1934, as amended, or in any other provision of law shall be construed to prevent United States communications common carriers from rendering, subject to such rules and regulations as the Federal Communications Commission may prescribe, free or reduced rate communications interconnection services for interconnection systems within the purview of this title, whether or not included in a project for which a grant is made under this title.'"

The letter presented by Mr. MORSE is as follows:

DEPARTMENT OF HEALTH,
EDUCATION, AND WELFARE,
March 21, 1968.

Hon. LISTER HILL,
Chairman, Committee on Labor and Public Welfare, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: We are transmitting herewith proposed amendments to title IX of S. 3098, the Administration's "Higher Education Amendments of 1968".

Title IX of the bill would, as you know, insert in the Higher Education Act of 1965 a new title VIII headed "Networks for Knowledge". (The existing title VIII of the Act would be renumbered.) Among the projects that could be assisted under the bill are projects for the planning, development, or carrying out of cooperative arrangements between colleges and universities for the "establishment and joint operation of closed-circuit television or equivalent transmission facilities" (§ 801(b)(4)).

1. We suggest the insertion of the following new section on page 95, immediately below line 3 (and at the same time the deletion of the closing quotation marks on line 3):

"'AUTHORITY FOR FREE OR REDUCED RATE COMMUNICATIONS INTERCONNECTION SERVICES

"'SEC. 803. Nothing in the Communications Act of 1934, as amended, or in any other provision of law shall be construed to prevent United States communications common carriers from rendering, subject to such rules and regulations as the Federal Communications Commission may prescribe, free or reduced rate communications interconnection services for interconnection systems within the purview of this title, whether or not included in a project for which a grant is made under this title.'"

This amendment is patterned after § 396(h) of the Communications Act of 1934, as added to that Act by the Public Broadcasting Act of 1967 (P.L. 90–129), and should be helpful in promoting the establishment and joint operation, by colleges and universities, of closed-circuit television or equivalent transmission facilities of the kinds that are within the purview of the proposed Networks for Knowledge provisions of the bill, whether or not included in a project aided with a Federal grant.

We understand that the amendment would not apply to the extent that the services are furnished by common carriers on a strictly intrastate basis, because such services are excluded from the rate jurisdiction of the Federal Communications Commission by § 2 of the Communications Act (47 U.S.C. 152(b)). However, even with respect to such cases, enactment of the amendment should help to dispose State rate-making authorities to permit carriers to render free or reduced rate interconnection service to colleges and universities in States where this is not already authorized.

2. As we interpret the term "equivalent transmission facilities" in clause (4) of the proposed § 801(b) (page 93, lines 22 and 23), it includes facilities such as the Instructional Television Fixed Service (ITFS); but in order to avoid any question on that score we suggest insertion of the following after "facilities" on page 93, line 23, of the bill: "(such as the Instructional Television Fixed Service)". ITFS is a point-to-point service operating on higher frequency (2500 to 2690 megacycles per second) than regular television broadcasting and cannot be received by the general public. Typically, in that service the classroom instructional programs carried are transmitted from a single point and are received by special antennas at the participating schools or institutions. There the signals are translated so that they can be viewed on conventional television sets in the classrooms. ITFS performs a very valuable service for in-school instruction and helps ease the problem of television broadcast channel shortages; acquisition of ITFS facilities is also one of the educational activities eligible for assistance under the Higher Education Act of 1965.

We are advised by the Bureau of the Budget that there is no objection to the presentation of the above-suggested amendments from the standpoint of the Administration's program.

Sincerely,

WILBUR J. COHEN,
Acting Secretary.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the distinguished Senator from Nebraska [Mr. CURTIS] be recognized for 10 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

TAXATION OF INDUSTRIAL DEVELOPMENT BONDS

Mr. CURTIS. Mr. President, for over 30 years industrial development bonds have been issued by States and their subdivisions and the interest therefrom has been held to be tax free by the Treasury Department. About 2 or 3 months ago the Treasury Department, without any justi-

fication or legal authority, undertook to make the interest on those bonds taxable by Treasury ruling.

Industrial revenue bonds have brought factories and other job-producing activities to hundreds of communities in the United States. This method of financing has brought jobs to thousands of people. Many of those who have received jobs were by every definition disadvantaged people. I am reliably informed that in the South many colored people have gotten permanent jobs from business concerns that were induced to initiate an activity by reason of the availability of industrial bonds, the interest on which was not subject to the Federal income tax.

The unwarranted action of the Treasury Department to disrupt all of this activity not only does not have the support of legal authority, but the Treasury has also relied on alleged facts that cannot be substantiated. For instance, the Treasury Department in their role as lawmakers and as lobbyists make the contention that these industrial bonds increase the interest for all other State and municipal bonds. The dollar problems, the gold drain, the Federal deficits, and the mounting debt are the real factors that cause interest rates to be high. It is interesting to note the fact that the cost of municipal borrowings in general reached the highest level in about 40 years during the period of February and March of 1968, a period during which industrial aid financing had been stalled and stopped by virtue of a proposed cutoff date established by the Treasury.

Mr. President, a very helpful discussion of the problems we face is set forth in a letter dated April 29, 1968, addressed to the chairman of the committee for evaluating of industrial aid financing and signed by Mr. William H. Cannon of the law firm of Nixon, Mudge, Rose, Guthrie, Alexander & Mitchell. Very shortly I will read that letter in full into the RECORD.

Our Federal tax laws are complicated. While we should always strive for simplification, our tax code will never be very simple. We have a complex economic system. American business is ingenious. Our system calls for freedom of contract. Property laws vary somewhat in the 50 States. Consequently, unless the Federal tax law is somewhat complicated with details that meet every situation that ought to be met, justice cannot be done.

Mr. President, the point I am making in reference to the unavoidable complexity of tax law is for the purpose of suggesting that the tax-free status of the income of industrial bonds be not disturbed until an appropriate committee has held ample public hearings. The appropriate committee to do this is the Committee on Ways and Means of the House of Representatives. The States and their subdivisions which have relied upon this system for over 30 years should be heard. The Treasury should be heard. Qualified people in the tax field should be heard. Our constituents should be heard. Then, and only then, is Congress in the position to find a just answer which meets all the legal requirements of our Constitution.

This whole area of worthwhile activity was thrown into chaos by the unwarranted action of the Treasury Department. The Curtis amendment adopted by the Senate Committee on Finance and approved by a rollcall vote of the Senate preserved the status of these bonds that has existed over the years until Congress could act. In presenting that amendment on this floor, I said if action were to be taken that the great Committee on Ways and Means should hold exhaustive hearings.

Because of the inappropriate and unwarranted lobbying of the Treasury Department, the Senate later passed the Ribicoff amendment. I am sure that the distinguished Senator who introduced that amendment was well intentioned. His amendment is defective and creates a lot of problems, none of which could be ascertained and answered on the spur of the moment when the Congress attempts to write tax law on the floor of either body. The letter that I will read points out the problems inherent in the Ribicoff amendment.

In the spirit of compromise, consideration has been given by Members of both bodies to the acceptance of the Ribicoff amendment by having its provisions exempted from industrial bond issues of less than $10 or $15 million. Such an exemption would take care of a sizable portion of the issues which are so essential in the business of providing jobs. Such a compromise would serve for awhile until the legal problems in other phases of the Ribicoff amendment could have attention by the Congress.

I am now advised that the Treasury Department forces are pressing for a dollar limitation on the Ribicoff amendment so low that when we consider the rising costs of land, factory buildings, and equipment, the whole program would be scuttled.

Mr. President, I find no provision in the Constitution which gives the Treasury Department authority to join in the deliberations of a conference committee between the House and the Senate. I question their right to be there but they are there.

In view of the entire situation, I should like to take this means to urge the conference committee to approve the Curtis amendment, which does not legislate but rather prevents the Treasury from unlawfully legislating, and that the conference committee eliminate the Ribicoff amendment until exhaustive hearings can be held by the Committee on Ways and Means.

Mr. President, I ask unanimous consent that the letter to which I referred be printed at this point in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

NIXON, MUDGE, ROSE, GUTHRIE, ALEXANDER, & MITCHELL (CALDWELL, TRIMBLE, & MITCHELL),
New York, NY., April 29, 1968.

Re Proposed Treasury and congressional action relating to industrial aid financing.

Mr. MARQUETTE DE BARY,
Chairman, Committee for the Evaluation of Industrial Aid Financing, Washington, D.C.

DEAR MARQ: I am writing to confirm our various conferences and telephone conversations relating to the Proposed Treasury Regulation dealing with industrial development bonds and the pending Congressional legislation known as the "Curtis Amendment" and the "Ribicoff Amendment."

I have, many times, stated to you our position that the Treasury does not have the power or authority to legislate in the area concerned, its power being limited to one of interpreting the Code. I have also spoken to you concerning the question of tax exemption for state, municipal and other public obligations and informed you that there is a school of thought which believes the power to regulate such tax exemption is vested in the Congress and another school of thought which believes that such tax exemption stems from the Constitution of the United States and may not be affected by Congressional legislation. Without getting into the merits of the latter two schools of thought, I believe that it can be positively stated that all agree on the first premise, namely, that the Treasury may not legislate in this area.

In respect to the proposed Treasury regulation, most well informed people dealing with or having knowledge of the problem, feel that the proposed regulation of the Treasury constitutes legislation and goes beyond the level of pure interpretation. You may ask how such conclusion is arrived at and in response to any such query, please let me advise you of the contents of a meeting which I attended in Washington on Friday, April 19, 1968.

That meeting was attended by Mr. Stanley Surrey, Assistant Secretary of the Treasury for Tax Policy and Mr. Fred R. Becker of his office. Numerous other people attended and represented various educational institutions as well as various public authorities which by virtue of legislation have the ability to assist both public and private institutions for higher education and, in certain states, non-profit hospitals. The meeting was also attended by the representatives of the American Council on Education. The purpose of the meeting was to register objection and explore alternatives to the proposed Treasury regulation which, while purportedly designed to deal only with industrial aid financing actually affects all financings by public bodies involving private or non-profit schools, hospitals, electric power and gas utilities, and other similar publicly oriented purposes when the lessee or mortgagee of the financed facility is obligated to pay to the issuer moneys which are adequate to service the debt of the issuer and to pay all other expenses of operation and maintenance of the facility. Quite clearly, the proposed regulation extends into many areas beyond the industrial aid sector.

At the conference, both Mr. Surrey and Mr. Becker clearly stated that such effect was specifically intended by the proposed regulation emphasizing that the proposed regulation was not to be limited solely to industrial aid problems. It was conceded that the language of the proposed regulation referring to industrial development bonds is a misnomer and that, in fact, the proper terminology should have been industrial development "type" bonds. I am enclosing herewith as a separate attachment, an additional summary of the meeting prepared by John Holt Meyers, Esq. who appeared at the meeting on behalf of the American Council on Education. His summary generally reflects the problems but perhaps goes a little bit too far in concluding that all states might require remedial legislation.

I would prefer to suggest that most but not all states would require remedial legislation. Before moving to the next comment, I should also like to point out that the Treasury views as expressed at the meeting include within the scope of industrial development bonds and the collateral prohibitions which stem therefrom not only revenue bonds but, additionally, so-called general obligation or full faith and credit bonds, it being the view of the Treasury that if there

is a combination of revenue and tax or full faith and credit pledge, that the pledge beyond the revenue pledge simply constitutes a guarantee by the public body designed to constitute a cover up of the Treasury's conclusion that any conduit type bond is in reality a bond of the lessee or mortgagee and not a bond of the issuer.

As you know, there has been much talk about the Congress enacting legislation dealing with the industrial aid problem whereby the Congress might include a dollar limitation on the size of any given industrial aid bond with a further provision that any such issue in excess of the dollar limitation would not be entitled to tax exemption. Such a proposal, if enacted into law might very well be arbitrary and unreasonable and therefore subject to litigation for the purpose of having the limitation declared unconstitutional. Other alternatives have been suggested and discussed but each alternative seems to have a weakness in one form or another, either financial, legal, or practical. We believe that we are faced with an extremely complex problem which before action and legislation should be given careful and complete study with the hope that we will avoid many resultant problems. It would be our hope that the "Curtis Amendment" would be enacted into law by the Joint Conference thereby forestalling the action of the Treasury which can only lead to enumerable problems not only in the industrial aid area but in many other areas of municipal, state and public finance. We fully recognize the value of the "Ribicoff Amendment" and the thoughts of those who sympathize with the imposition of a cut-off date for industrial aid financing. The "Ribicoff Amendment", which we understand was drafted by the Treasury, and has its support, includes many of the problems implicit in the proposed Treasury regulation in that while it purports and seems to be directed solely to industrial aid financing may readily be interpreted by the use of the term "commercial" as going far beyond the expressed purpose. Additionally, it includes various stated exceptions which may also be construed as being arbitrary and unreasonable with a consequent possibility of litigation to have the bill declared unconstitutional; in this regard, for example, many people fail to understand an exception made for the construction and financing of a stadium used by football or baseball teams.

Certainly, it is not our province to advise you concerning the ramifications of industrial aid financing in respect of its affect on general municipal financing and any cost which is shifted to a normal municipal undertaking by virtue of industrial aid financing. You have made a complete and thorough study in this regard and we are completely aware of your views as well as the views of those who differ with you; however, we do not feel that we could write this letter to you without directing your attention to the fact that the cost of municipal borrowings in general reached the highest level in about forty years during the period of February and March of 1968, a period during which industrial aid financing had been stalled and stopped by virtue of a proposed cut-off date then existing.

If we may be of further service to you and if you desire amplification on the views, please call upon us.

With kindest personal regards, I am

Very truly yours,

WILLIAM H. CANNON.

Mr. CURTIS. The letter refers to a meeting by the writer of the letter with Mr. Stanley Surrey, Assistant Secretary of the Treasury for Tax Policy, and Mr. Fred R. Becker of his office. I quote from the letter:

The purpose of the meeting was to register objection and explore alternatives to the proposed Treasury regulation which, while purportedly designed to deal only with industrial aid financing actually affects all financings by public bodies involving private or non-profit schools, hospitals, electric power and gas utilities, and other similar publicly oriented purposes when the lessee or mortgagee of the financed facility is obligated to pay to the issuer moneys which are adequate to service the debt of the issuer and to pay all other expenses of operation and maintenance of the facility. Quite clearly, the proposed regulation extends into many areas beyond the industrial aid sector. At the conference, both Mr. Surrey and Mr. Becker clearly stated that such effect was specifically intended by the proposed regulation emphasizing that the proposed regulation was not to be limited solely to industrial aid problems.

Then, Mr. President, the letter contains this statement:

I should also like to point out that the Treasury views as expressed at the meeting include within the scope of industrial development bonds and the collateral prohibitions which stem therefrom not only revenue bonds but, additionally, so-called general obligation or full faith and credit bonds, it being the view of the Treasury that if there is a combination of revenue and tax or full faith and credit pledge, that the pledge beyond the revenue pledge simply constitutes a guarantee by the public body designed to constitute a cover up of the Treasury's conclusion that any conduit type bond is in reality a bond of the lessee or mortgagee and not a bond of the issuer.

Then, Mr. President, the letter points out that the Ribicoff amendment contains all of the errors found in the regulation itself.

In light of what has transpired, I am thoroughly convinced that the only way to handle this matter is for the conference to retain the Curtis amendment, eliminate the Ribicoff amendment, and that hearings be held.

Mr. President, in addition to the letter to which I have referred, I ask unanimous consent to have printed at this point in the RECORD a letter from the firm of Williams, Myers & Quiggle, signed by Mr. Myers.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

WILLIAMS, MYERS & QUIGGLE,
Washington, D.C., April 24, 1968.

Mr. LAURENCE N. WOODWORTH,
Chief of Staff, Joint Committee on Internal Revenue Taxation, Longworth House Office Building, Washington, D.C.

DEAR MR. WOODWORTH: In response to your request, there is enclosed herewith a memorandum setting forth briefly the experience with respect to tax exempt bonds issued by authorities created in various states for the purpose of supporting dormitories, academic facilities and the like at private as well as public colleges and universities and hospital facilities not only for such institutions but also for public and private nonprofit hospitals. In all instances of which we have knowledge, the bonds are directly tied to the particular institution's dormitory or facility, the lease payments and the structure being security for the bondholders. In one state consideration is being given to requiring an advance deposit of one year's lease rentals by the institutions. The fund thus created might be used as security for defaults by participating institutions but the bonds themselves would still be directly tied to the institution and facility with respect to which they were issued.

As I advised you, the Treasury takes the position that bonds issued under such circumstances are covered by the proposed regulations with respect to "industrial development bonds" and, hence, will become taxable. The Treasury does not believe that there is any way, by regulation, to recognize that the construction of such facilities at private nonprofit educational institutions is a "public" activity to be distinguished from the construction of a meat plant for a private concern even though in many cases the same project may be supported in part by a Federal grant or loan and/or a state grant or loan. The Treasury position is that, in such instance, the obligation is not the obligation of the state or political subdivision but of the university, college or hospital which could itself not issue tax exempt bonds.

In a conference held on Friday at the Treasury's request, the Treasury officials suggested that they might be able to take a different position if the bonds of various institutions were in fact pooled and the obligations not directly tied to a particular lease or project. From a practical point of view, it seems clear that an open-end pool of this sort would produce bonds which could not be marketed unless the state itself were to guarantee the bonds or somehow insure their payment with tax revenues. Such a guarantee would be impossible under the constitutions of a number of the states and in any event unlikely. It is conceivable that closed-end pools of bonds might be created but the practical difficulties of doing this are great. In addition, any such procedure would require modification of the statutes in all of the states. Even if this were feasible, it would not be possible in the immediate future because of the nature of the legislative sessions in the various jurisdictions.

The so-called Ribicoff amendment printed in the Congressional Record at 8147 has been suggested as an alternative. This amendment does not specifically include in the exceptions from bonds "used for industrial or commercial purposes" bonds issued to finance facilities for colleges, hospitals and similar noncommercial activities. However, the colloquy between Senators Ribicoff and Javits on 8156, the letter from Mr. Surrey introduced into the record by Mr. Javits on the same page thereof and the colloquy between Senators Scott and Ribicoff the following day would seem to establish clearly the intent of the Senate as to the continued exemption of such bonds from Federal income taxation. Whether the colleges, universities and state authorities created for their benefit have a right to rely on this I cannot say. If the Conference Committee does accept the Ribicoff measure, it would certainly help if the report made clear the exception in favor of bonds issued by state authorities created for the purpose of providing dormitories and other facilities at private colleges and universities and hospital facilities at public and private nonprofit institutions.

If the Treasury, despite Ribicoff, continues to adhere to the position expressed in the proposed regulations and apply them equally to steel plants and college dormitories, there will, of course, be an interim problem because of the effective date of the Ribicoff bill which, we understand, is not subject to change by the conferees under the conference rules. There is some doubt in my own mind as to the continued application of the proposed regulations even if the Ribicoff measure is accepted unless, of course, this is somehow clarified by the Conference Report.

With best personal regards,

Very truly yours,

JACK MYERS.

Enclosure.

P.S.—Because of the time involved, I have not had an opportunity to review the memorandum or this letter with those directly concerned. I will, however, do so immediately.

J. H. M.

P.P.S.—It is to be noted that Congress has always treated public and private colleges and universities as equal not only in virtually all of the Federal grant, aid and research programs but also in the Internal Revenue Code itself. Where discriminations of one sort or another have been called to its attention, Congress has quickly caused them to be corrected. For example, see IRC Section 403(b) ("public schools" added to give public institutions the benefit of the same annuity provisions available to private educational institutions); IRC Section 511(a)(2)(B) (unrelated business tax applied to state colleges and universities as well as private colleges and universities) and IRC Section 170 (b)(1)(A) (benefits of extra 10 percent deduction extended to public institutions where it previously applied only in cases of private colleges and universities). The reason for this was well expressed by Congress in extending the exemption from retailers and manufacturers excise taxes and the transportation and communications taxes to operating nonprofit educational institutions in the Excise Technical Changes Act of 1958. "It is believed that the exemption from excise taxes for purchases by public schools without similar exemption for nonprofit private schools represents discriminatory treatment." If the proposed regulations with respect to industrial development bonds are allowed to stand, there will be obvious discrimination in favor of public colleges and universities *vis a vis* similar private institutions.

J.H.M.

APRIL 24, 1968.

MEMORANDUM

(Re: Authorities created by states (or municipalities) for the purpose of providing dormitories and academic facilities at public and private institutions.)

A number of states, including New York, New Jersey, Ohio, Massachusetts, Rhode Island, Connecticut, Vermont, Alabama, Mississippi, Pennsylvania and Virginia, have passed or are about to pass statutes creating state or municipal authorities whose purpose is to provide dormitories, academic or other facilities at colleges and universities, public and private. In some states, the authorities may also provide facilities for public and private nonprofit hospitals. The details of the legislation in the various states differ although most are generally patterned after the New York statute, which has been in existence for several years.

1. *New York*—New York's basic statute provides for a dormitory authority which issues bonds for state and private institutions. The statute came into existence in 1961. Since that time, the authority has actually sold 10 issues for the benefit of the state university, having a face value of approximately $200,000,000. In addition, the authority has issued $86,000,000 of notes in connection with planned or authorized projects. The same authority has marketed approximately 65 issues for the benefit of private colleges and universities having a total value of $300,000,000 with $40,000,000 of notes issued under the same circumstances as set forth above. Needless to say, the issues have benefitted not only the major private institutions, such as New York University, Cornell, Columbia, Syracuse and Fordham, but also many smaller institutions, such as, Ithaca, Mills College of Education, Keuka, Cazenovia and Briarcliff College. One issue in the amount of approximately $5,000,000 was to have been sold for the benefit of Niagara University on Tuesday but the sale was canceled because the issue would not meet the transition rules with respect to the proposed Internal Revenue Service regulations on industrial development bonds.

2. *Connecticut*—Connecticut's authority is fairly new. Under it, bonds may be issued for the benefit of private and public nonprofit colleges and private and public nonprofit hospitals. One $4,000,000 bond issue has been sold for the University of Hartford and one $9,000,000 bond issue has been marketed for the benefit of Middlesex Hospital. A $3,400,000 issue for the Rockville General Hospital had to be canceled for reasons similar to those set forth above. In addition, as in New York, there are a number of hospitals and colleges which are in the process of completing or have completed the requirements with respect to the issuance by the authority of bonds for their benefit.

3. *Rhode Island*—The Rhode Island statute, very new, is about to be amended to include hospitals as well as colleges. It authorized the issuance of bonds for dormitories as well as academic and other facilities insofar as colleges are concerned. One in the amount of approximately $12,000,000 has just been sold for the benefit of Brown University. Other universities, including Brown, have other applications pending for approval.

4. *Pennsylvania*—Pennsylvania's authority primarily for the benefit of nonprofit private universities and colleges has just been activated. The University of Pennsylvania, Duquesne, Villanova and Pennsylvania Military College, among others, have made or are making application to the authority for assistance.

5. *New Jersey*—The New Jersey statute has just been passed.

6. *Vermont*—The Vermont statute has been in existence for two years. Its experience is not known although it is not believed that any private institutions have yet benefitted therefrom.

7. *Massachusetts*—The Massachusetts statute is about to pass the legislature after changes made as a result of a special decision by the highest court of Massachusetts as to the statute's constitutionality.

8. *Alabama*—The Alabama state law authorizes municipalities to create authorities for the benefit of private and public colleges and hospitals within 15 miles of the corporate limits of the municipality. There are apparently separate statutes for private and public authorities. At least three small colleges, which were ineligible for Federal grants because of their financial instability, have benefitted from authorities created by the municipalities in which they are located by reason of bond issues sold for their benefit.

9. *Mississippi and Virginia*—Mississippi and Virginia have passed or are about to pass statutes based upon the Alabama pattern.

10. *Ohio*—The Ohio statute, based apparently on the New York-Connecticut pattern has just passed this year and no bonds have as yet been issued.

The best judgment is that the average bond issue will exceed $5,000,000 even in the case of many small colleges and universities. Many planned issues, both for hospitals and colleges and universities, are in the range of $20,000,000 to $30,000,000. For example, the issue scheduled for the benefit of the University of Pennsylvania is in the neighborhood of $40,000,000 to $50,000,000. In the case of Pennsylvania, as in the case of many institutions, considerable expense has already been incurred in planning, purchase and negotiations with the dormitory bond authorities.

It should be noted in passing that there may be difficulty in some instances in determining whether a particular college is or is not a public instrumentality for the purposes of the proposed regulations. In Pennsylvania, for example, Penn State, which is already held to be a public instrumentality, has a completely private board of trustees. Pittsburgh and Temple have long been recognized as private institutions but now accept state aid and certain controls and are considered to be "state related." In a number of states, the major state institutions have such constitutional separation that they have been recognized by the Internal Revenue Service as exempt under IRC Section 501(c)(3) rather than as public instrumentalities, for example, the University of Michigan.

JACK MYERS.

LEST WE FORGET

Mr. CURTIS. Mr. President, it has been a long time since the North Koreans seized the U.S.S. *Pueblo*. The fact that many events have taken place both at home and abroad since that seizure does not lessen the importance or significance of this act committed against the United States.

Perhaps the *Pueblo* has been forgotten by some. I hope that official Washington has not forgotten the *Pueblo* or the officers and men that constituted her crew. It is gratifying to know that while there are many voices in the country raised in defense of the hostile acts of Communists whenever they take place anywhere in the world, there are still those who raise their voice in defense of America and American citizens. No nation in the history of the world has ever done anywhere near as much as the United States has done since World War II in protecting the helpless, defending liberty, feeding the starving, and resisting aggression. As a nation we have acted unselfishly.

Mr. President, I invite to the attention of all Senators, of all who constitute the Government of the United States, and of the public at large, how one newspaper has refused to forget the *Pueblo* and has refused to forget the American citizens who serve on her crew. On May 1, 1968, the Omaha, Nebr., World-Herald published a brief editorial, as follows:

HOW LONG?

This is the one hundredth day the U.S.S. *Pueblo* and her crew have been in North Korean hands.

For 99 days prior to May 1, the World-Herald ran a similar editorial. I commend that newspaper for what it has done. I believe that the story of what it has done merits a place in the official RECORD of Congress. I hope that it will be noticed by all in Washington, lest we forget.

Mr. President, what has our Government done, and what is it now doing to obtain the release of the *Pueblo* and her crew?

RATIFICATION OF GENOCIDE CONVENTION FITTING TRIBUTE TO WARSAW GHETTO

Mr. PROXMIRE. Mr. President, last week Congress honored the 25th anniversary of the uprising in the Warsaw ghetto. Speeches in both Houses praised the bravery and daring of those great men and women who faced the full might of the Nazi war machine. A concurrent resolution commemorating this tragic event, passed both houses.

Such action is in the American tradition of honoring men who love and fight for freedom, no matter of what nation, race, or religion. Yet there is another, perhaps better, memorial we can offer in long-lasting tribute to those gallant people of the Warsaw ghetto. We can ratify

the Convention on the Prevention and Punishment of the Crime of Genocide.

It is indeed terribly sad that 25 years after the systematic and wholesale slaughter of millions of human beings, the United States has not taken this small step toward protecting the right of people everywhere to live without fear of national, religious, or racial extermination.

Mr. President, I urge the Senate to correct this situation now and ratify the Convention on Genocide.

NATIONAL COLLECTION OF FINE ARTS TO OPEN MAY 3, 1968

Mr. PELL. Mr. President, a major cultural event will take place in our city tomorrow evening, for at 9 o'clock the National Collection of Fine Arts will have its opening ceremonies.

One could go into many superlatives on the longstanding need for a National Collection of Fine Arts. One could trace the development of the concept and culminate it with a discussion of the excellent collection which has been hung and will be permanently on view. Suffice it to say that at last indigenous American art, works by our own citizens, now have a home—an institution devoted to exhibiting what is best in our heritage.

In the old Patent Office Building, our citizens—for truly this is a collection which through its many services will be viewed throughout the country—will be able to trace the growth and recognize the richness of America's visual artistic heritage. That oft quoted cliche about the last 20 years finally making the Nation an artistic center will be laid to rest, for it will be seen that there was an artistic richness almost from the time of our Nation's founding. Great representational art will be juxtaposed with avant garde works, all American.

An interesting facet of the collection relates to those works of art which came out of the WPA artists' program. Perhaps our country's first experiment in support of esthetic endeavors, the WPA program has never been given the recognition it so truly deserves. Through it, many artists whose names are well known today were able to continue working at their craft in days when there were little funds for anything other than food. However, the New Deal recognized the value of art, and today our Nation is richer for that foresight. Fortunately, we now have a National Endowment for the Arts, which has an ongoing program of support for the arts; and hopefully our children will likewise benefit.

I should like to congratulate Dr. S. Dillon Ripley, Secretary of the Smithsonian Institution, of which this new museum is a constituent part; David W. Scott, Director of the National Collection of Fine Arts; Adelyn Dohme Breeskin, Acting Curator for Contemporary Painting; Jacob Kainen, Curator of Prints and Drawings; and Richard P. Wunder, Curator of 19th Century Painting and Sculpture. Also, a special word to Charles Olin and his staff of art conservators, who have helped make the exhibit a technically excellent one. My wish is for a great opening and continued success.

Mr. President, I ask unanimous consent to have printed in the RECORD two articles, one published in the Washington Post of April 28, 1968, the other in Newsweek magazine of May 6, 1968, concerning this great event.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

[From the Washington Post, Apr. 28, 1968]

A MAJOR NEW ART MUSEUM TO OPEN

(By Paul Richard)

This city, already rich in museums, is about to become considerably richer. Next weekend, with suitable ceremonies and fanfare, the Government will open a major new museum here devoted exclusively to American art.

History will haunt the opening. Ghosts of long dead planners will celebrate with the tuxeodoed guests. For the new gallery fulfills a vision that was conceived long before any of us were born.

The sculpture in the fountained courtyard are steel and new. Contemporary, too, are many of the brightly colored prints and paintings hanging in the vaulted halls. But the collection that contains these things is more than a century old and the building that houses them is older still.

The museum was conceived in 1846 when Congress, establishing the Smithsonian Institution, provided, somewhat vaguely, for the inclusion in the Institution of a national "gallery of art."

The gallery's new home is the Old Patent Office Building, an enormous Greek Revival monument at 8th and G Streets nw. It was built in the 1830s on a grassy hilltop that Maj. Pierre L'Enfant had designated as a suitable site for the new Republic's national cathedral.

In the decades that followed, the fortunes of both the old building and its newest tenant waxed and waned. Both were repeatedly threatened with destruction. Both were stalked by misfortune and neglect.

The Smithsonian's art collection—now known as the National Collection of Fine Arts—was destroyed, apparently forever, shortly after it was born.

On a freezing night in January, 1865, workmen preparing for an exhibition installed a portable stove amid the plaster casts and Indian paintings exhibited in the second floor art gallery of the Smithsonian's "Castle on the Mall." The chimney into which they plugged their stovepipe was not a chimney but a ventilation shaft. Almost the entire collection was destroyed in the resulting fire. Plans for the development of a national gallery came to a complete stop.

In the years that followed, the Old Patent Office Building had its troubles, too. During the Civil War it served as barracks, hospital and morgue. Fire gutted it in 1877. The building began to slip into decay.

Then the gallery's fortunes began to grow. The Government, realizing that the Republic, despite its riches, had no national art museum of any sort, officially revived the Smithsonian's long-forgotten gallery of art.

Collections and funds began to trickle in. "Temporary" exhibition space was set aside in the Museum of Natural History on the Mall. The future seemed bright. But whenever the gallery seemed about to blossom, new arrivals appeared in Washington and shoved it back into the dark.

First, Charles Lang Freer, a Detroit millionaire, gave the Nation his collection of Whistleriana and Oriental art. The new Freer Gallery opened on the Mall in 1923.

Then Andrew Mellon came along. In 1936 he offered the Nation his $30 million collection of irreplaceable old masters and an additional $20 million with which to build and endow a new museum on the Mall.

Mellon insisted that his offering be called the National Gallery of Art. It was. The Smithsonian's national gallery, its name appropriated, was then renamed the National Collection of Fine Arts.

Congress had noted both the sorry state of the National Collection and the National Gallery's heavy emphasis on European art. Responding to both patriotism and remorse, it sketched a broad new program for the National Collection of Fine Arts. The Smithsonian was given a new mission. It was told to encourage American artists and the appreciation of American Art.

That sudden burst of enthusiasm generated much activity. A site was selected for a new National Collection building on the Mall. A design competition, won by Eero Saarinen, the architect of Dulles Airport, was conducted. Ringing speeches were given. But nothing happened.

Then, in the decade following World War II, interest in the dormant and impoverished National Collection revived again.

The world had begun to realize the international importance of the new American art. Avant-garde painting, nourished by the programs of the Works Progress Administration, was blossoming in New York. That city's Museum of Modern Art was thriving. But Washington still had no Federal gallery of American art.

The sudden acceptance and popularity of the new American painting coincided with the threatened destruction of the Old Patent Office Building. Legislators who considered it useless and inefficient introduced a bill that would have replaced its Doric columns, its marble halls and spacious courtyard, with a parking lot.

That disaster was averted. In 1958 Congress decided to save the building, to renovate its interior, and to turn it over to the National Collection of Fine Art (which will open its Galleries to the public on May 6) and to the new National Portrait Gallery (which will open in the fall).

Six million dollars were spent on renovations. The Collection was given a new director, Dr. David Scott, and a new mission. Despite the insufficiencies of its finances and its collection it was told to prepare suitable programs for its new and enormous home.

The task will not be easy. Unlike the National Gallery, which from the moment of its inception played a unique role in the Nation's Capital, the National Collection faces a future filled with competition and uncertainty.

In its efforts to assemble a rich survey of historical American paintings it will surely bump up against the National Gallery, whose holdings in 18th and 19th century American paintings are growing steadily. The National Gallery is extremely rich and planning to expand.

In the field of contemporary art, which ten years ago appeared wide open, the Collection will have to compete with yet another new museum. Joseph H. Hirshhorn, an insatiable collector, has given his vast collection of 20th century paintings and sculpture to the United States. As soon as governmental finances permit, a building and garden specially designed to house his gift will be built across from the National Gallery on the Mall.

The city's private galleries are thriving, too. In staging temporary exhibitions the National Collection will be competing not only with the National Gallery and the Hirshhorn Museum, but with ambitious programs of the Corcoran, the University of Maryland and the Washington Gallery of Modern Art.

The National Collection has readied itself for the struggle. In the decade since it was promised its new home, it has changed from a moribund adjunct of the Smithsonian into a scrappy and ambitious institution.

It has succeeded in capturing important new collections (including the 102 contem-

porary works of the S. C. Johnson Collection which it was given in 1966). Its staff, its holdings and its activities have grown. And it has sponsored a wide variety of lively and scholarly exhibitions that have been shown in Washington, in other American cities and at international art festivals abroad.

The 500-work inaugural show and this week's celebrations mark a major turning point. After decades of poverty, dormancy and neglect, the National Collection and the extraordinary building it inhabits will finally and unmistakably come to life.

[From Newsweek, May 6, 1968]

THE NATIONAL COLLECTION

Washington's Smithsonian Institution, which has been called everything from a "billion-dollar curiosity shop" to a "hodgepodge of engines and false teeth," has never been, for the most part, a center of the arts. Such disparate objects as Lindbergh's "Spirit of St. Louis," the Hope Diamond, four-legged chickens and the world's largest crystal ball have attracted more attention than its art. Once the Smithsonian held its extraordinary nineteenth-century American paintings collection in such disregard that they were hung in ghastly green frames behind the stuffed elephant in the Natural History Museum.

Fortunately, American art has come of age at the Smithsonian. When its National Collection of Fine Arts opens this week in the famous Old Patent Office Building, not only will the collection have its first permanent home but the U.S. will have its first national gallery devoted to the history of American art.

The museum will also house a major art library and will enrich its collection of photographs, microfilms and documents, and expand its lending program and educational facilities to government agencies, American Embassies and schools. "It is the big dream," says National Collection director David Scott. "The dream is so big, so preposterous that I'm still catching my breath."

To celebrate the opening artists Tony Smith and Louise Nevelson are making sculptures, President Johnson will give a dedication speech to 2,000 blue-ribbon guests, and more than 500 works of art, selected from the 11,000 pieces that the National Collection owns, will be exhibited. Displayed on all four floors of the building and in the courtyard, the huge exhibition includes a major two-century collection of prints, a survey of American art from the eighteenth century to the present and an especially large show of twentieth-century paintings and sculpture.

Thus it is possible to see everything from the American primitives to the abstract expressionists and the pop and op painters, from the Hudson River and the Ashcan Schools to the WPA artists and the contemporary Washington Color Painters. "We're going to push all sides," says Scott. "We don't want to slight historical art but there is good reason to concentrate on twentieth-century art. It's much more exciting."

BEST

Over the years the National Collection has amassed much unique material. It boasts the biggest and best American impressionist collection in the world, including Childe Hassam and John Twachtman, and owns eighteen Albert Pinkham Ryders, the largest single group in the country. Richard Wunder, curator of eighteenth- and nineteenth-century art, notes American impressionists are returning to favor. "Only last year the National Gallery bought the best Twachtman they could get for an enormous sum and it couldn't match any of ours. And our Ryder pictures are the best he painted. No one can touch them."

The National Collection has major collections of the work of twentieth-century sculptors Paul Manship and William Zorach and all the works and the studio of neoclassicist Hiram Powers. "We are the natural repository of America sculpture," says Wunder, "because no other museum in the entire country has the kind of space to show large-scale works."

The National Collection might open some fascinating new views on American art as it pulls from its stacks and exhibits excellent paintings of forgotten artists. Especially noteworthy is the haunted Toulouse-Lautrec-like world of feather-boaed dancers, lusty men, and flighty androgynes created by Romaine Brooks, an American expatriate, now 90, who lives in Paris. William H. Johnson, a Negro, has vividly charted the social injustices and torments of the American Negro through violent colors and primitive shapes, and H. Lyman Sayen has dynamited the American landscape with all the brilliance and force of the fauves. "One of our jobs," says Adelyn Breeskin, curator of twentieth-century painting, "is to acquire works of artists who have fallen by the wayside."

DORIC

The collection's building, however, renovated at a cost of $6 million, emerges as the masterpiece of the National Collection. Designed in 1836 by Robert Mills, the architect of the Washington Monument, the building, with its four Doric-columned temple facades, is a superb example of Greek Revival American architecture. The interior is a delightful mixture of Gothic groin vaults, Egyptian hypostyle halls, and terrazzo floors. In its long life, the building has been used for exhibiting patent inventions, billeting Civil War troops and staging Lincoln's second Inaugural Ball.

Founded in 1846 in the Act of Establishment of the Smithsonian Institution, the National Collection, like the National Gallery of Art, the Corcoran, the Phillips and the Freer, will undoubtedly become one of Washington's and the country's major museums. "We are going to have not a frozen but a continuing and living survey of American art," says Scott. "Within ten years we hope to be the Tate Gallery of America. But our first great job is to consolidate the collection, build the staff, and assess the role of leadership that has been thrust upon us. We have a monument and now we must find out how to direct it."

IMPROVEMENT OF SOUTH VIETNAM MILITARY FORCES

Mr. McGEE. Mr. President, one of the most welcome developments to become apparent in Vietnam has been the improved capability, morale, and discipline of the South Vietnamese military forces. This was made evident by the failure, during the Tet offensive, of the North Vietnamese and Vietcong to entice Saigon troops into turning coat. We can look, as well, at more recent combat operations, in which the South Vietnamese Army has performed its tasks with proficiency, including the current operations in the A Shau Valley.

As the Evening Star reported last night in an editorial, this increased level of performance on the part of the South Vietnamese military gives hope that in time they will be able to assume, as have the troops of South Korea, the major burdens of their own national defense. I ask unanimous consent that the Star's editorial be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

LOYAL TO SAIGON

One of the bitterest disappointments of the Viet Cong and the North Vietnamese is that their Tet offensive—their all-out Lunar New Year assault on South Vietnam's cities—failed to bring about a "general uprising" against the Saigon government. And the most discouraging thing of all, apparently, was the collapse of their propaganda campaign to entice "officers, troops, policemen and public servants of the southern puppet administration" to defect to the side of Ho Chi Minh.

This has been made clear by recently captured Communist documents. As a Star correspondent has reported from Saigon, the documents show a desperate pre-Tet effort on the part of Hanoi and the Viet Cong to persuade members of the regular South Vietnamese army to turn traitor and "leave the enemy ranks for our people and our fatherland." The appeal suggested that economic, political and other rewards would be bestowed on all military units or individual soldiers who "voluntarily rise up to stage a coup d'etat or an uprising." The response, however, was completely negative. American authorities back up President Thieu's claim that there were virtually no defections during or after the Tet turmoil.

It has been more or less fashionable in the past, in some quarters, to belittle the quality of South Vietnam's armed forces. But what is becoming increasingly evident now is that those forces—officers and men in the ranks—have toughened up to a point where their military proficiency, discipline, loyalty and morale command respect. The show they have been putting on of late suggests that they will be able in due course—like South Korea's troops—to assume the major burdens of national defense. This is a prospect of prime significance.

RESEARCH CLUES SECTION OF THE NEA JOURNAL

Mr. YARBOROUGH. Mr. President, every month the Educational Resources Information Center—ERIC—of the U.S. Office of Education publishes "Research in Education," a review of research conducted under the auspices of the U.S. Office of Education.

As all of us know that this research, necessary though it is, is of little value unless its results are disseminated among those people who can translate it into operational programs.

The Office of Education is to be congratulated for its efforts in the dissemination of research results which in the instance of its September, October, and November 1967 issues of "Research in Education" is included in the NEA Journal of February and March 1968 in a regular section of the Journal titled "Research Clues."

I ask unanimous consent to have printed in the RECORD the "Research Clues" section of the NEA Journal for February and March 1968.

There being no objection, the section was ordered to be printed in the RECORD, as follows:

[From the NEA Journal, February 1968]

RESEARCH CLUES

(NOTE.—This regular monthly feature of brief research summaries is designed to encourage the teacher to become familiar with significant research in instruction and to conduct action research of his own. It should be remembered that research studies on a particular topic do not always agree and that no single study should be considered to reveal the final answer. The items below are based on a review of research reported in the

September and October 1967 issues of Research in Education, which is published monthly by the Educational Resources Information Center (ERIC) of the U.S. Office of Education. The accession number of each report upon which these summaries are based is given to facilitate further investigation by the teacher.)

What does recent research say about optimum class size?

A study group of the New York State Teachers Association reviewed many research studies concerned with class size. The group found that approximately 80 percent of the research reviewed either substantiated the value of small classes or was inconclusive. When principles of research methodology were applied to variables affecting learning, 5 out of every 6 studies tended to favor small classes.

The group also pointed out that teacher judgment and experience should receive serious consideration in determinations of class size. Teachers have learned that large classes force development of a group norm expectancy, whereas smaller classes allow the teacher to be innovative to give more attention to individual differences, and to employ better teaching practices.

Although recognizing the difficulties involved in determining class size and grouping policy, the study group pointed out that optimum class size of 25 is the average of those class sizes where consideration has been given to purpose, grouping, educational philosophy, pupil characteristics, and different kinds of learning. (ED 011 470.)

Has any recent research evaluated the phonovisual method of teaching beginning reading?

Researchers compared the achievement test performances of two groups of children for grades 1, 2, and 3 in two Pasadena, California, schools to evaluate the effectiveness of a three-year experimental program using the Phonovisual method of reading instruction. They also analyzed the differences between the mean scores of groups at each grade level, and for each sex within the respective groups, on achievement tests in reading vocabulary, reading comprehension, and spelling.

Five researchers found the children in the experimental school to be superior to their counterparts in the control school in each analysis of test performance. Although the girls' performance was generally superior to the boys', boys exposed to the Phonovisual method were aided substantially in achieving higher levels of proficiency in reading skills. (ED 011 498.)

Can mnemonic devices be helpful to high school freshmen?

A Texas study attempted to discover whether or not high school freshmen who had not used mnemonics could profit by their use. It also tried to determine whether the mnemonics should be supplied to the student or whether the student should be taught to construct his own.

The study revealed that the use of mnemonic devices led to a marked improvement in test scores. Also, any type of mnemonic device supplied by the experimenter was found to be effective. Supplying such devices appeared to be more effective than requiring the student to make his own. (ED 011 088.)

Do older students learn more if the teaching methods are student-centered?

An inquiry into the effects of greater learner autonomy on achievement among teacher education students compared a lecture-discussion method used in regular class meetings with a "continuous progress" method in which students had only two formal class meetings devoted to procedural, not substantive matters. One control and one experimental class (taught by the same instructor) were involved in the investigation.

In the experimental method, the student received a packet containing a list of behavioral objectives, instructions, a list of assignments, study guide questions, introductory readings, and for some units, a worksheet. He was tested upon completion of each unit, and moved to the next unit if he passed. If not, he repeated the unit and was retested, sometimes on a different test.

On a 75-item criterion test (also used as a pretest), significantly higher post-test scores were earned by the continuous progress students. Significant differences in favor of the experimental method were found for the 10 students with the lowest grade-point average, but this was not so in the case of the two groups of 10 students with the highest grade-point average. (ED 011 253.)

[From the NEA Journal, March 1968]

RESEARCH CLUES

(NOTE.—This regular monthly feature of brief research summaries is designed to encourage the teacher to become familiar with significant research in education and to conduct action research of his own. It should be remembered that research studies on a particular topic do not always agree and that no single study should be considered to reveal the final answer.

The items below are based on a review of research reported in the November 1967 issue of Research in Education, which is published monthly by the Educational Resources Information Center (ERIC) of the U.S. Office of Education. The accession number of each report upon which these summaries are based is given to facilitate further investigation by the teacher.)

How effective is the lecture as a teaching technique?

A recent survey of research on the lecture technique revealed that it is fairly effective for imparting information when the purpose is to arouse interest in a subject and when retention over a period of time is not important. However, it has its limitations. A lecture must be short and carefully constructed. It should be simple in language and style. It should present only meaningful and uncomplicated information. (ED 011 640.)

What does research say about the feasibility of the year-round school?

In evaluating year-round schools. Polk County, Florida, schools requested the Florida Educational Research and Development Council to make a study of the literature on the year-round operation of public schools and a nationwide survey of state departments of education. Three of seven plans were selected for special analysis—regular year, plus summer attendance; staggered four quarters; and the trimester.

Public reaction from 4,210 respondents (2,477 parents, 487 teachers, and 1,246 students) favored the regular school year, plus a summer program operated without cost to parents but with attendance compulsory for students not promoted and voluntary for others. A plan providing 210 days of continuous study for all pupils was recommended as the best means of increasing the educational quality level and obtaining the greatest amount of educational return per dollar invested in the public schools. (ED 011 690.)

Has the effectiveness of programed learning in an audiolingual language course been investigated recently?

Yes, a recent experiment at the University of Akron was made to determine whether a self-instructional course utilizing a language laboratory was more effective than a course taught under traditional classroom conditions, whether the percentage of students dropping out could be reduced significantly, and whether student interest could be maintained.

A comparison between the experimental and control groups yielded the following information: (a) A smaller percentage of students dropped the experimental course. (b) Low-aptitude students who completed the course did well. (c) A greater percentage from the experimental group than from the control group continued in and completed their second-year French. (d) All students of the experimental group attained exceptional accuracy in pronunciation. (e) Generally, the experimental group did as well as the control group, and significantly better in their mastery of the spoken language and in their variety and accuracy of grammatical structures. (f) At the end of the second year, students from the experimental group had maintained their standing in respect to the students from the control group. (g) Low-aptitude students achieved results that compared well with those of more gifted colleagues. (h) A completely self-instructional program, without a teacher, is not feasible. ED 011 737.

Another study, at Indiana University, examined the results of six years of research on self-instruction in a foreign language. The Indiana researchers concluded that total programed instruction seems productive only in cases where very slight behavioral changes are sought. Experiments have shown that it is most useful in modules at early levels for teaching specific features of pronunciation, grammar, or vocabulary.

Partial programing, such as that developed at Indiana University, suggests that live teaching and programed instruction can be complementary. The machine is used for routine drill while the teacher provides situations and opportunities for the student to transfer structure and vocabulary learned and practiced in the laboratory to natural communication in which he adjusts to the unpredictability of another person's responses. (ED 011 743.)

Is reading achievement at the primary level greater in smaller classes?

Yes, according to a recent University of California study. A three-year experimental primary-grade reading program conducted with a 50-percent reduction of reading-class size was evaluated in the Riverside, California, Unified School District for the years from 1962 through 1965. Test scores were analyzed for 656 children in the experimental group who had two or more years of experience in the experimental program and for 602 in the control group who had one year or less in the experimental program.

The small-class program (an average of 15 students per class) was started in a stratified random sample of seven elementary schools the first year. Six schools were added the second year, and eight more the third year. Data gathered from the Metropolitan Readiness Tests in grade one, Metropolitan Achievement Tests in grades two and three, the California Short Form Test of Mental Maturity in grade two, and the School and College Aptitude Test in grade four were analyzed according to experimental and control group readiness, intelligence, reading achievement, and sex differences.

The experimental group achieved significantly higher than the control group, according to the amount of time spent on the experimental program. Findings indicated that first grade instruction was most crucial, and that boys benefited more from reduced class size than did girls. (ED 011 813.)

PEOPLE'S MARCH ON WASHINGTON

Mr. CARLSON. Mr. President, there is much concern not only among the citizens of Washington, but all over the Nation, in regard to the proposed poor people's march on Washington. The concern is not over the fact that these people are coming to Washington as a part of a protest movement, but the concern

is over the fact that it may get out of hand and develop into riots and disorder.

The freedom and security of every person depends upon all people obeying all the laws. We must keep in mind that if we destroy obedience to the law, the minorities will be the first and most fearful losers.

The civil rights problem of the United States will not be solved by riots and countermeasures. It will be solved by all citizens mutually cooperating in programs for the betterment of all mankind.

The May 6 issue of the U.S. News & World Report contains an excellent interview with the chairman of the Subcommittee on the District of Columbia Appropriations, the distinguished Senator from West Virginia, Hon. ROBERT C. BYRD. In the interview, Senator BYRD discusses frankly and fully some of the problems confronting the Nation's Capital. I ask unanimous consent that the article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

Question. Senator Byrd, what is your opinion of the planned "poor people's march" on Washington?

Answer. In my opinion there is no legitimate reason for the march on Washington. It can hardly serve a constructive purpose.

It will place an additional burden upon the already overtaxed metropolitan police department. It can inconvenience the citizenry and interfere with the orderly operations of the city.

It will place an added burden upon the taxpayer, who will be forced to pay the cost of extra health and police-protection measures. And it carries with it the potential for additional civil disorder and violence.

Question. Just what is the purpose of this march?

Answer. The stated purposes have not been clear. There have been suggestions concerning increased federal spending and additional legislative programs to help the poor, but the Federal Government is now spending at an annual rate of 25 billion dollars to help the poor.

I feel that the purpose of the march is to intimidate and pressure Congress into passing unwise legislation, and I also feel that the promoters of the march hope to gain publicity for themselves.

Question. If one purpose is to demand that Congress vote vast new sums of money, do you think Congress will go along?

Answer. I doubt that the Congress will vote vast new outlays of money for such programs as have been suggested, and I certainly hope that the Congress will not act under duress.

Question. Would you say that Congress has been generous with the District of Columbia?

Answer. I believe that the Congress should appropriate a larger federal payment to the city, and I have supported a larger payment. However, I think it should be stated in fairness to the Congress and to the District government that, while Negroes do constitute nearly 65 per cent of the total population in the District of Columbia, they constitute 92 per cent of the school population, and few people are aware that the District of Columbia ranks No. 1 among 15 cities of comparable size in the number of professional staff per 1,000 students.

Of the patients in D.C. General Hospital, 94 per cent are indigent, and at least 80 per cent are Negroes. The cost to the District of Columbia of indigent patients will be close to 24 million dollars in fiscal year 1968.

Additionally, approximately 90 per cent of the public-assistance case load is nonwhite, by family units. It should also be of interest that the Congress in recent years has appropriated increasing amounts of money for playgrounds and swimming pools and recreation projects, the beneficiaries of which are, in the main, Negroes.

Job-training programs and poverty programs and summer-employment programs have been directed in very large measure to benefiting the Negro population.

So, I think it is only fair to state that, by far, the major portion of the tax dollar that is spent in the District of Columbia has been spent for the education, the recreation, the health and welfare of Negro families, and the appropriation for fiscal year 1968 was half a billion dollars, which, aside from federal grant-in-aid funds, is a sizable sum of money.

Question. Senator, do you feel the city of Washington has been hurt by the recent violence and rioting?

Answer. Yes. Aside from the embarrassment and the unfavorable publicity, the city has suffered much costly destruction.

Many business people were subjected to great financial losses. The city revenues will be reduced as a result of lost taxes. The tourist business has been adversely affected. Many Negro families lost employment and shelter. Additional and costly burdens were placed upon the police and health and welfare departments. And race relations were set back.

Question. Are you concerned about the trend of events, nationwide?

Answer. I am greatly concerned for my country, regardless of any outside situation. I feel that we can see ample evidence of destruction of our nation from within.

Question. Some people say this is a situation being fomented, or, at least, exploited by Communists. Do you think there has been Communist inspiration, in some cases?

Answer. I would not ascribe it entirely to Communist inspiration or even mainly to such. I do think Marxist elements seek to exploit it.

I ascribe it more to the general atmosphere of permissiveness that has developed increasingly over the past two decades, during which we have seen the Supreme Court of the United States, through various decisions, virtually handcuff the police and encourage the lawless elements to become more active. This permissiveness has been generated also by the spate of mass demonstrations and acts of so-called civil disobedience which have been encouraged by some civil-rights leaders, some public officials and by a few clergymen. Add to this, the trend toward welfarism and the growing disregard for fundamental principles—belief in God, strong patriotism, willingness to work and earn one's way—and it should be evident that our republic may have started on the road to its ultimate decline and fall.

Question. What is the answer?

Answer. I suggest that, first of all, our country needs strong, courageous leadership.

Second, government has a right to survive, and its first duty is to preserve law and order. This can be done and it must be done—now.

Third, I believe it is vital that all Americans strive toward better understanding and that whites and nonwhites strive mutually to get along with one another. There must be mutual respect between the two races.

People must also face up to the fact that legislation cannot confer status on anyone, but that this must be earned through effort and proper conduct. Finally, the home, the school, and the church have got to do these things: Teach respect for authority and foster the fundamental principles of strong patriotism, industriousness, desire to earn one's way through honest toil, and a genuine belief in God. There must be a spiritual recrudescence if we are to save the flesh.

NUCLEAR WEAPONRY AGREEMENT ENDANGERED

Mr. McGEE. Mr. President, the world has come a long way toward reaching some form of agreement concerning the spread of nuclear weaponry. Certainly this is true when Russia and the United States have agreed to a treaty by which they would, together, guarantee other nations against the threat of nuclear blackmail. This milestone has been reached, however, and for the first time since the advent of the atomic age there is a serious prospect that membership in the nuclear club can be limited and policed to halt effectively the spread of these terrible weapons.

The irony is that new nations—a handful of them—from Africa are threatening to hold up a vote on the treaty in the United Nations, simply, as Crosby Noyes points out in a column published in the Evening Star of April 30, on the basis of self-assertion. If they succeed, the doubts concerning the effectiveness of the U.N. must certainly increase. That is, in itself, a problem which concerns us greatly.

Mr. President, I ask unanimous consent that Mr. Crosby's column, "A Propitious Time To Freeze Nuclear Club," be printed at this point in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

A PROPITIOUS TIME TO FREEZE NUCLEAR CLUB

(By Crosby S. Noyes)

It would be ironic if the treaty to prevent the spread of nuclear weapons now being debated at the United Nations should be blocked or seriously delayed by a handful of African states.

For these African countries, of all the countries in the world, would make the least sacrifice by renouncing the possession of weapons which they have no prospect whatever of acquiring in the foreseeable future.

Their move in the General Assembly to hold up a vote on the treaty is purely for the sake of self-assertion. Their threat to delay the signing of the treaty until after a meeting of non-nuclear countries at Geneva next summer is inspired by the sheer joy of exasperating the great powers.

It is the more ironic in that the great powers, after decades of futile diplomatic dithering, have finally come up with something promising in the field of weapons control.

It is not the millennium. The validity of any treaty depends on how accurately and how long it continues to reflect the real interests of the countries that sign it. The Kellogg-Briand Pact of 1928 outlawing war was hailed in its day as a monumental achievement, only to become a grim mockery a few years later.

One may hope that halting the spread of nuclear weapons will be in the real interests of all countries for a long time to come. But no treaty is likely to prevent a country from building nuclear weapons if it has the capacity to do so and if its survival depends on doing so. And even within the present membership of the nuclear club, the danger of an explosion does not encourage complacence.

Still, the nuclear treaty does rate as a major accomplishment. The mere fact that it is sponsored by the United States and Russia, over the bitter objections of Communist China and the reservations of some of our European allies, is a switch of major significance. The joint Russian-American guarantee to other countries against nuclear blackmail—aimed directly at China—is a fascinating indicator of how times have changed.

These features of the treaty are, in fact, more interesting than the central agreement not to give nuclear weapons or technical knowhow to non-nuclear nations. Since neither Russia nor the United States had the slightest intention of doing this to begin with, there was no difficulty with that part of the contract. Even the fact that two nuclear nations—China and France—will not sign the treaty is not looked on as a serious drawback.

The real effectiveness of the treaty in halting the spread of nuclear weapons, of course, depends on how many non-nuclear nations take the pledge. Not only do they agree not to buy or build their own weapons for at least 25 years, the initial duration of the treaty, but also to submit to an effective system of international inspection when it comes to the use of nuclear energy for peaceful purposes.

This raises serious problems for a number of countries, particularly those that have the technical knowhow and industrial capability of becoming nuclear powers in their own right. Until quite recently, there have been serious doubts that such countries as West Germany, Japan, Italy, Sweden, Egypt and Israel would sign the treaty.

There is less doubt today because of an ingenious bit of arm-twisting written into the treaty itself.

The provision specifies that the nuclear powers cannot give or sell nuclear fuel for peaceful purposes to countries that have not signed the treaty or at least agree to international inspection of their atomic plants. Since this provision affects especially the more advanced nuclear-capable countries, it is hoped it will provide a strong incentive for signing.

And so for the first time there is a serious prospect of freezing the membership of the nuclear club and policing peaceful reactors which, by 1980, will be turning out enough plutonium to make 15,000 nuclear weapons each year.

It is an opportunity which may not come again and which most certainly should not be passed up now. Even the possibility that this effort could be frustrated by the vanity and frivolity of a few irresponsible members of the U.N. would cast the most serious doubt on the future of the world organization.

DICK NIXON TALKS SENSE

Mr. HRUSKA. Mr. President, in the welter of campaign oratory which floods America in this political year, one voice rings through the clamor and confusion with bell-like clarity. It is the voice of Richard Nixon.

While many liberal candidates with long records of big-government and big-budget sponsorship campaign in the Nation's heartland with calls for returning the Government to the people; while many who have defended deficit financing as the cure to the Nation's ills now preach fiscal responsibility; while many who have been a part of the administration's Vietnam policy now call for our withdrawal from Southeast Asia; while such political expediency has been assailing the eyes and ears of the American electorate, one man—Dick Nixon—has been talking sense to the U.S. voter.

This fact has been recognized by the editors of Time, the weekly news magazine, in its current issue. Treating of the candidates' statements on the urban crisis, Time said:

No candidate has addressed himself more realistically to the plight of the Negro slum dweller thus far in the 1968 campaign than did Richard Nixon last week. In a nationwide CBS broadcast, the former Vice President defined a philosophy that combined pragmatism, compassion and faith in the black American's will to achieve his aims within the framework of society.

That same commonsense, constructive approach to a wide range of American problems has characterized Mr. Nixon's campaign statements.

I ask unanimous consent to have printed in the RECORD the highlights of Dick Nixon's radio broadcast on the problems of the cities, as they were published in Time.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

NIXON ON RACIAL ACCOMMODATION

(NOTE.—No candidate has addressed himself more realistically to the plight of the Negro slum dweller thus far in the 1968 campaign than did Richard Nixon last week. In a nationwide CBS broadcast, the former Vice President defined a philosophy that combined pragmatism, compassion and faith in the black American's will to achieve his aims within the framework of society.)

Today we commonly speak of the urban crisis. And yet the problems wrenching America today are only secondarily problems of the cities. Primarily, they are problems of the human mind and spirit. For years now, the focus of talk, of debate, of action has been on civil rights—and the results has been a decade of revolution in which the legal structure needed to guarantee equal rights has been laid in place. Voting rights, schools, jobs, housing, public accommodations—in all of these areas, new laws have been passed, old laws struck down. The old vocabulary of the civil rights movement has become the rhetoric of the rearview mirror.

DISMAL CYCLE

And yet these victories have not brought peace or the fullness of freedom. Neither have the old approaches of the '30s—the Government charities that feed the stomach and starve the soul. For too long, white America has sought to buy off the Negro—and to buy off its own sense of guilt—with ever more programs of welfare, of public housing, of payments *to* the poor, but not *for* anything except for keeping out of sight: payments that perpetuated poverty and that kept the endless, dismal cycle of dependency spinning from generation to generation.

Our task—our challenge—is to break this cycle of dependency, and the time to begin is now. The way to do it is not with more of the same but by helping to bring to the ghetto the light of hope, and pride and self-respect. We have reached a point at which more of the same will only result in more of the same frustration, more of the same explosive violence, more of the same despair. The fiscal crisis now confronting America is so great, and so urgent, that only by cutting the federal budget can we avert an economic disaster in which the poor themselves would be caught calamitously in the undertow.

The reality of the national economic condition is such that to talk of increasing the budget to pour additional billions into the cities this year is a cruel delusion. But this does not mean that because we cannot do more of the same, we must do nothing new For the fact is that all the money in the world wouldn't solve the problems of our cities today. We won't get at the real problems unless and until we rescue the people in the ghetto from despair and dependency. If the ghettos are to be renewed, their people must be moved by hope. What we do not need now is another round of unachievable promises of unavailable federal funds.

What we do need is imaginative enlistment of private funds, private energies and private talents in order to develop the opportunities that lie untapped in our own underdeveloped urban heartland. We need incentives to private industry to make acceptable the added risks of ghetto development and of training the unemployed for jobs. Bridges of understanding can be built by revising the welfare rules so that, instead of providing incentives for families to break apart, they provide incentives for families to stay together; so they respect the privacy of the individual; so they provide incentives rather than penalties for supplementing welfare checks with part-time earnings. We must make welfare payments a temporary expedient, not a permanent way of life, something to be escaped from, not to. Our aim should be to restore dignity to life, not to destroy dignity.

Black extremists are guaranteed headlines when they shout "Burn!" or "Get a gun!" But much of the black militant talk these days is actually in terms far closer to the doctrines of free enterprise than to those of the welfarist '30s—terms of pride, ownership, private enterprise, capital—the same qualities, the same characteristics, the same ideals, the same methods that for two centuries have been at the heart of American success. What most of the militants are asking for is not separation but to be included in, to have a share of the wealth and a piece of the action. And this is precisely what the central target of the new approach ought to be. It ought to be oriented toward more black ownership, for from this can flow the rest: black pride, black jobs, and, yes, Black Power—in the best sense of that often misapplied term.

PROMISE AND FULFILLMENT

We should listen to the militants, hearing not only the threats but also the programs and the promises. They have identified what it is that makes America go and, quite rightly and quite understandably, they want a share of it for the black man. The ghettos of our cities will be remade when the people in them have the will, the power, the resources and the skills to remake them. They won't be remade by Government billions. We have to get private enterprise into the ghetto. But at the same time, we have to get the people of the ghetto into private enterprise.

At a time when so many things seem to be going against us in the relations between the races, let us remember the greatest thing going for us—the emerging pride of the black American. That pride, that demand for dignity, is the driving force that we all can build upon. These past few years have been a long night of the American spirit. It's time we let in the sun. It's time to move past the old civil rights and to bridge the gap between freedom and dignity, between promise and fulfillment.

EFFECTIVE FIREARMS CONTROL LAWS NOW EXIST

Mr. ALLOTT. Mr. President, on Saturday, April 27, I was rather startled to read an Associated Press dispatch, published in the Washington Post, which quoted the Attorney General of the United States as saying that the sniper slayer of Dr. Martin Luther King might not have been able to buy with "impunity" the death weapon which was used in the slaying of the civil rights leader if Congress had acted in the past to deal with Federal firearms control legislation. I shall read the entire article to Senators. Mr. Clark opts that Dr. King's assassin might not have been able to buy the murder weapon with impunity if there had been strong Federal laws on the books to control the interstate shipment of firearms.

The headline is: "Clark Ties King Slaying to Gun Law," and the article is as follows:

Attorney General Ramsey Clark, urging strong laws to spike gun sales, said yesterday the sniper slayer of Rev. Dr. Martin Luther King, might not have been able to buy the death weapon if Congress had acted in the past.

The Senate Judiciary Committee recently approved a measure to outlaw shipping hand guns across state lines after spurning a broader ban the day Dr. King was shot to death in Memphis, Tenn.

Clark told newsmen Dr. King's slayer "may not have been able to have bought that rifle at that time with impunity" if there had been strong Federal laws on the books controlling the interstate shipments of both rifles and pistols.

Mr. President, I differ with Mr. Clark's observations in this regard. In fact, I must observe that this kind of public pronouncement beguiles and befuddles citizens into fearing that, in fact, there simply are no adequate firearm control laws on the Federal statute books. I presume—or at least I hope it is safe to presume—that the Attorney General knows better. I am referring of course, to the existence of two such laws which have existed for 30 years: the National Firearms Act of June 26, 1934, and the Federal Firearms Act of June 30, 1938. Lest I be accused of pushing the enforcement of some outmoded, 30-year-old law onto our new Attorney General, I shall read a section of the latter law, title 15 U.S.C., section 902(f), which I believe, as a former district attorney, is fully capable of enforcement and which might help some of our citizens realize that there are, at the present time, tough, adequate laws to deal with the question:

It shall be unlawful for any person who has been convicted of a crime punishable by imprisonment for a term exceeding one year or is a fugitive from justice to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce, and the possession of a firearm or ammunition by any such person shall be presumptive evidence that such firearm or ammunition was shipped or transported or received, as the case may be, by such person in violation of this chapter.

I would point out, Mr. President, that essentially the same language appears in section 922 of title IV of S. 917, which the Attorney General appears to favor so strongly.

It appears, also, that Congress as long ago as 30 years had the wisdom to accompany its laws with penalties which it hoped might insure the worth of its legislation. Section 905 of the Federal Firearms Act prescribes penalties for any person violating the provisions of the act and provides for a fine of not more than $2,000 or imprisonment for not more than 5 years, or both.

The information developed so far by the Federal Bureau of Investigation describes Dr. King's assassin as James Earl Ray, also known as Eric Starvo Galt, a man who not only is a fugitive from justice, but also is a person who has spent more than his fair share of the public's money in penitentiaries as a result of having been convicted more than once of crimes punishable by imprisonment for terms exceeding more than 1 year. It would appear, at least it is to be hoped, that this man, when apprehended, is ripe for a proceeding under the Federal Firearms Act.

Mr. President, I honestly believe that citizens would be more disturbed if they realized the problems of the lack of enforcement of present law than they are for the need for the passage of new laws dealing with the same problems. Nothing stagnates more quickly than criminal statutes which have never felt the fresh animation of honest enforcement. Criminal statutes denied honest enforcement quickly fossilize on the shelf of public mockery and disregard. This is true, of course, whether it be the 5-month-old provisions of Public Law 90–226 providing penalties for persons engaged in or inciting riots in the District of Columbia or the 30-year-old statutes dealing with Federal firearms control legislation.

It may be, Mr. President, that Dr. King's assassin obtained the murder weapon "with impunity" not out of any lack of respect for congressional efforts to deal this year with firearms legislation as suggested by the Attorney General, but because he knew of the incredible lack of success by the Departments of Justice and the Treasury to proceed against anyone under the laws to which I have referred. On page 75 of the 1967 hearings before the Juvenile Delinquency Subcommittee is a table, presented by the Director of the Treasury Department's Alcohol and Tobacco Tax Division, of the number of cases prepared for prosecution under the statutes to which I have already referred. This table shows the following:

CRIMINAL CASES PREPARED

Fiscal year	National Firearms Act	Federal Firearms Act	Combination (both acts)	Total
1963	293	55	10	358
1964	306	53	14	373
1965	321	60	17	398
1966	346	100	19	465
1967	515	184	21	720

How many of these cases were eventually presented to the various U.S. attorneys throughout the country for prosecution, or were actually prosecuted, we do not know. But we do know that a recent Federal grand jury indictment in New York revealed a startling fact: It was the first indictment by a Federal grand jury concerning the interstate shipment of guns under the key enforcement provision of the Federal Firearms Act.

The importance of effective enforcement of present firearms legislation was raised in a recent column of Roger Latham which appeared in the February 6, 1968, issue of the Pittsburgh Press. I ask unanimous consent that this entire column be printed in the RECORD.

Where James Earl Ray got his sense of "impunity" about these matters I do not know. I frankly doubt if Mr. Clark really knows. But I do know that Congress has dealt in the past with this subject and that a sense of "impunity" might well be derived from a realization that no law is self-executing, and that an executive branch which fails to execute the will of the legislative branch immobilizes the democratic process.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

OLD GUN LAW FINALLY FIRES ITS FIRST SHOT

(By Roger Latham)

An article in the February issue of American Rifleman is written by Charles Lee Howard, an inmate in the Ohio State Penitentiary at Columbus.

Howard, who is serving his third felony sentence (15 to 55 years for armed robbery and kidnapping), tells how at 26 he had possessed 20 different pistols and got all but one of them illegally. In fact, 19 of the 20 were stolen.

He claims that from inside prison walls, the antigun uproar makes strange reading. He says:

"It's baffling that the people who want to prevent criminals like me from getting hold of guns expect to accomplish this by passing new laws. Do they forget that the criminal makes a business of breaking laws? No criminal would obey a gun law while committing a crime of equal or greater seriousness."

To carry this subject of gun laws a little further, a recent conviction by Federal agents revealed a startling fact. For the first time since its passage in 1938, a provision in the Federal Firearms Act concerning the interstate shipment of guns has been enforced!

Just recently, U.S. Attorney Robert Morgenthau obtained a Federal grand jury indictment against a Nanuet, N.Y., firearms dealer. The indictment charged that the mail-order house violated the 30-year-old law by shipping guns to individuals in other states who had not produced the required state or local licenses or permits.

ENFORCE PRESENT LAW FIRST

Sportsman interests have maintained for years before congressional committees and subcommittees consider new legislation that existing Federal firearms laws suffer from lack of enforcement by the U.S. Treasury and Justice Departments.

At the same time, the Treasury and Justice departments have been working strenuously for more rigid gun laws, pushing in particular for increasingly restrictive versions of the Dodd bills.

The delay in acting upon a provision of Federal law is a glaring example of lax enforcement. It lends strength to the position of law-abiding gun owners that existing laws never have been given a real chance.

Sportsmen see little merit in passing additional laws when Federal enforcement agencies have scarcely sampled the effectiveness of laws passed three decades ago.

This same lack of active enforcement probably also has contributed to the general lack of information about gun laws on the part of the public.

PENALTIES ARE THERE

The public has been led to believe there are no laws which prohibit criminals from obtaining firearms, even though such prohibitions have been a basic part of the Federal law since 1938.

The Act provides: "It shall be unlawful for any person who has been convicted of a crime punishable by imprisonment for a term exceeding one year or is a fugitive from justice to receive any firearm or ammunition . . ."

A violation of the act can bring imprisonment up to five years, a fine up to $5000, or both.

Once again, it may well have been the singular lack of enforcement which has created this impression among the public and the news media. Under questioning by Congressmen at hearings in Washington Treasury officials have claimed they are unable to enforce these firearms laws because of lack of manpower.

During the 1965 hearings, Treasury officials admitted that only two men and three

women were assigned full time to enforcement of both the 1938 Federal and 1934 National Firearms acts. This hardly seems a strenuous effort for a department which views the commerce in firearms with such alarm.

This lack of enforcement seems to go along with the lack of action on reasonable and useful firearms legislation.

NEW CONCERN OVER U.S. DETERMINATION TO STAY IN VIETNAM

Mr. McGEE. Mr. President, all along, during the years of struggle in Vietnam, the chief concern of our friends and allies in Asia has been over whether or not the United States has the determination, the persistence, and the patience to stay the course. This concern has arisen anew, as David Lawrence pointed out last night in the Washington Evening Star, in the wake of the recent and continuing talk of coming peace negotiations.

I ask unanimous consent that Mr. Lawrence's column be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

ASIAN STATES JITTERY OVER VIETNAM

(By David Lawrence)

A new crisis is emerging in Asia. Many of the smaller countries are beginning to worry about the possibility that the United States may give in to North Vietnamese pressure and agree to let the Communist-controlled rebels in the South—known as the National Liberation Front—play a vital part in the coming truce negotiations. What is mostly feared is that some "face-saving" formula is in prospect which will really mean in the end a takeover of all of Vietnam by the Communists.

It so happens that Communist activity has been sharply increased inside several countries in Asia. South Korea is fighting stepped-up infiltration and subversion by North Korean Communists. Indonesia is encountering guerrilla warfare with Chinese minorities in the northern part of the country. Cambodia is being troubled by sporadic guerrilla activities in three provinces. At least one third of Laos is under the control of Communist forces, and 40,000 North Vietnamese troops are in that country. The northern provinces of Thailand are the scene of Red terrorism and subversion. New trouble has been stirred up in Burma as well as in Northern India.

In the face of all this, what is the United States going to do? Pull out of South Vietnam? The prime minister of Malaysia said recently:

"If the Americans for some reason decided to give up this war in Vietnam and the North decided to take over the South, then it will be the end of us all."

Inside the United States, both Sens. Robert F. Kennedy and Eugene J. McCarthy, two of the Democratic aspirants for the presidential nomination, favor a "coalition" in the government of South Vietnam to include the National Liberation Front.

President Johnson has said that the NLF representatives could be consulted during the peace conference, but that he does not favor their participation directly in the negotiations or in the government to rule subsequent to the peace agreement. These comments are being interpreted throughout Asia nevertheless as meaning that the United States is trying somehow to wiggle out of Vietnam in order to meet domestic pressures. President Nguyen Van Thieu of South Vietnam shortly will meet in Washington with Johnson and outline his reasons why a "coalition" agreement of any kind would be fatal to the Saigon government. An American official in Southeast Asia is quoted this week in "U.S. News & World Report" as follows:

"Thieu's government would be overthrown by the South Vietnamese army within 24 hours if he puts his signature on a document that let the Liberation Front into the government."

Another U.S. official in Saigon makes this comment:

"No representative of the Liberation Front is going to be welcome in Saigon. Let them step out of the jungle and they would be assassinated. Or is Washington going to break up the South Vietnamese army and take away its guns?"

A spokesman for the State Department declared yesterday that the "Alliance of National, Democratic and Peace Forces"—a Vietnamese group which broadcast a manifesto from Hanoi over the weekend—would not be accepted by the United States government as a participant in the peace negotiations. The department's press officer, Robert J. McCloskey, noted that the "alliance" talked about setting up a national coalition government, and he made it clear that the United States does not intend to deal with the "alliance" in any way, because it is considered an organization directed by the National Liberation Front.

The officials of governments in Southeast Asia, of course, read the American newspapers. A number of editorials have appeared in prominent places in this country advocating a compromise which would lead to the withdrawal of American troops.

Since the presidential campaign undoubtedly will focus attention on the Vietnam issue, the Asian governments are apprehensive that the Johnson administration, despite its firmness heretofore, will indicate a willingness to make concessions which in the long run could only mean the overthrow of the South Vietnamese government and the rise of a Communist regime in Saigon.

DALLAS MORNING NEWS EDITORIAL ENDORSES GUADALUPE NATIONAL PARK APPROPRIATION

Mr. YARBOROUGH. Mr. President, at a time when the country is concerned with Federal spending and getting the most for its money, it is hard for me to believe that Congress would pass up a bargain. I am talking about the Guadalupe Mountains National Park, authorized by Congress in 1966.

In that same year, Congress appropriated money to buy one-third of the land to make this park a reality. The remaining land—with its plants and wildlife conscientiously preserved by its owner, Mr. J. C. Hunter, of Abilene, Tex.—may be purchased by the Government at a bargain price, for the State of Texas has agreed to donate to the National Park Service its extensive mineral interests in the area.

The Dallas Morning News of April 24, 1968, contains an editorial entitled "A Time to Spend." Mr. President, the time to spend the money for the purchase of the additional land is now. The longer Congress delays in appropriating funds for the land, the higher the price of that land will become.

I ask unanimous consent that the editorial be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

A TIME TO SPEND

U.S. Department of Interior has asked the House Appropriations Committee for $1,446,000 to purchase remaining land needed for Guadalupe Mountains National Park.

This beautiful scenic area in West Texas adjoins New Mexico; see pages 12 and 14 of the 1968–69 Texas Almanac. Congress authorized it in 1966. After much debate, the Texas Legislature removed oil-rights obstructions to its establishment.

Congress last year authorized $354,000 of a requested $1.8 million appropriation. The News' Washington Bureau predicts that the committee will recommend part of the current request in its appropriations report next month.

Owner J.C. Hunter Jr. of Abilene is offering the land to his nation at a bargain price. He has preserved its scenic beauty, plants and wildlife for many years so that all Americans may someday enjoy it. How much longer Hunter will continue this unselfish offer is in doubt.

This is no Texas boondoggle. Phoenix, Tucson, Albuquerque and Santa Fe are nearer neighbors to Guadalupe than Dallas is. Denver and Dallas are about the same distance from the park.

Deciding what and when to spend and save is one of the most perplexing problems individuals and governments face. The current fiscal crisis compounds the difficulty. Wise decision-makers must choose with extra care now. But here's a case where it's good sense to spend a little to gain a lot for all Americans, for all time.

SBA DISASTER ASSISTANCE TO GREENWOOD, ARK.

Mr. FULBRIGHT. Mr. President, on April 19, the town of Greenwood, Ark., was virtually leveled by a tornado which struck the main downtown area in mid-afternoon. After the initial shock, the citizens of the community looked to the Small Business Administration for disaster assistance. That agency responded with characteristic promptness and concern by setting up an auxiliary office in the stricken area and by rescinding a policy which might have seriously diminished the effectiveness of the disaster loan program. The Small Business Administration; its Administrator, Mr. Robert C. Root; the Director in Little Rock, Mr. Chris W. Ferguson; and his employees are to be commended for their prompt and sympathetic actions. I join my constituents in expressing appreciation for the services of the Small Business Administration and ask unanimous consent to have printed in the RECORD some of the correspondence that was exchanged on the subject.

There being no objection, the correspondence was ordered to be printed in the RECORD, as follows:

APRIL 23, 1968.

Hon. ROBERT C. MOOT,
Administrator, Small Business Administration, Washington, D.C.

DEAR MR. MOOT: Please accept my thanks and deep appreciation for the prompt action of the Small Business Administration in making its disaster assistance available to the people of Greenwood, Arkansas. Many responsible citizens of Greenwood have advised me, however, that changes made in your loan policy last month may seriously diminish the effectiveness of the disaster loan program.

As I understand this policy, the SBA now reduces the amount of a disaster loan, which might otherwise be justified, by an amount equal to the proceeds of a private insurance claim which might have been paid, if the disaster victim had been fully insured against the hazard causing the damage. I

further understand that such a policy had not been in effect prior to March 19, 1968, and that it was adopted as part of a general "austerity" policy throughout your agency.

Even if such a policy should be judged as wise and in the public interest, which I do not concede, I cannot accept as equitable the precipitate imposition of a limitation on the amounts of disaster loans without, so far as I am aware, any public discussion or any public notice of the effects of such a limitation.

Every citizen may be said to be a potential beneficiary of the Small Business Act and of policies adopted to implement that Act. Every citizen, therefore, may be expected to alter his position as a potential beneficiary in consequence of the law and administrative policies. I do not know what actions might have been taken by those whose businesses were damaged by the tornado in Greenwood, if they had known of your policy regarding private insurance policies. But the fact remains that, so far as I know, they had no real notice of this policy and an unreasonably short time to act even if they had notice. I submit that serious policy changes of this kind should not become effective without public discussion and public notice.

I respectfully request, therefore, that this policy change be rescinded. If, in the future, you should determine that such a policy is desirable, I am sure that the Congress would carefully consider a legislative proposal to amend the Small Business Act. I hope that you may act promptly in rescinding this policy, and I would appreciate a reply at your earliest convenience.

With best wishes, I am,

Sincerely yours,

J. W. FULBRIGHT.

SMALL BUSINESS ADMINISTRATION,
Washington, D.C. April 25, 1968.

Hon. J. W. FULBRIGHT,
U.S. Senate,
Washington, D.C.

DEAR SENATOR FULBRIGHT: Thank you for your letter of April 23, 1968, regarding our recent disaster loan policy change which reduces the amount of a disaster loan where the disaster victim was underinsured.

This will confirm our telephone advice to your office that pending issuance of public notice of this insurance policy change I have deferred its implementation.

Other members of the Arkansas Congressional delegation interested in the Greenwood, Arkansas, area have also been informed of this decision. Appropriate Congressional Committees will be advised.

I am pleased that we could comply with your request. If we can be of further help, please let us know.

Sincerely yours,

ROBERT C. MOOT,
Administrator.

FARMERS BANK,
Greenwood, Ark., April 25, 1968.

Hon. J. W. FULBRIGHT,
U.S. Senate,
Washington, D.C.

DEAR SENATOR FULBRIGHT: Thanks for your help at the time we needed you to give the March 19th ruling on the SBA. The disaster in Greenwood was terrible, however, we are recovering and in the process of re-building.

Our town will be bigger and better than ever. The people are working together and we have had a tremendous response from area towns in the clean-up job.

This is our means of expressing the feeling of all the people of Greenwood in saying thanks to you.

We look forward to your visit with us in the near future.

Yours truly,

MEANS WILKINSON, *President.*

APRIL 30, 1968.

Mr. MEANS WILKINSON,
President, Farmers Bank,
Greenwood, Ark.

DEAR MEANS: I do appreciate your thoughtful letter. One of the things that gives me pleasure is to be able to be of help to people like you and the citizens of Greenwood. I have seen the pictures of the terrible destruction, and naturally I will be pleased to do anything I can to be of assistance in rebuilding. If any further obstacles arise with the Federal agencies, please do not hesitate to let me know.

With best wishes, I am,

Sincerely yours,

J. W. FULBRIGHT.

FARM PARITY DROPS AGAIN

Mr. MUNDT. Mr. President, in a release dated April 29, which reached my office yesterday afternoon, I note that the Department of Agriculture in its publication, entitled "Agricultural Prices," states that the parity ratio for the farmer has declined one point to 73 percent.

This release confirms the position which I have been taking for many months, now, that the runaway inflation, launched and encouraged by the Johnson administration, is more seriously hurting rural America than any other area by depressing farm income and the resulting lowering of the farmers' parity.

The announcement by the Department of Agriculture stated that the index of prices received by farmers remained unchanged during the month from their continuing low level, but that the index of prices paid by farmers advanced three points during the month.

Mr. President, the announcement by the Department of Agriculture advises us that prices for food, clothing, building materials used in home construction and repairs, household furnishings, and autos and auto supplies rose 1 percent in 1 month, and 4 percent in the past year. Food prices alone averaged 1 percent above the March reported figure and 3 percent above a year ago.

Prices paid by farm families for wearing apparel averaged 1 percent higher than the March reported figure and 7 percent above a year earlier with the largest increase in average prices coming in women's clothing.

Prices paid by farmers in the past month for building materials used in the construction and repair of dwellings averaged 1½ percent above a month earlier and 7 percent a year earlier.

The index of prices paid by farmers for production goods in the past month increased one-third of a percent and was 1½ percent above a year earlier. Prices averaged higher for seeds, feeder livestock building and fencing materials, and motor vehicles.

Thus, Mr. President, with the prices for what he must purchase to continue operations increasing, and the prices he receives remaining stable, or even being depressed in some instances, it is no wonder that the farmer's parity and economic position deteriorates even further with every passing month. Agriculture prices and agriculture's parity cannot stand up under the blows which are being delivered on it from this administration. The agriculture economy cannot withstand the assault of increased imports which take away from the American farmer markets which are rightfully his. The economy of the American farmer and his parity ratio are bound to be depressed when the administration continues to permit the wage guidelines to be breached on all occasions which result in the increasing of the prices which farmers must pay for their items of living and production—while at the same time that same administration does not come forth with any new programs or recommendations for agriculture which will in any way increase the price which he receives for products which he produces.

The farmer's parity cannot withstand the assaults of unbalanced budgets and the deficit spending which have increased his interest rates to the highest levels in over 40 years and have placed an added burden on his costs of production.

Finally, the parity ratio of the farmers of the Nation cannot stand the assault by administrators and planners of this administration, which cut the funds for the Farmers Home Administration so that the FHA cannot meet even the applications for operating loans for farmers; which cut the funds for REA—the farmer's most economical hired man; which seemingly administers most programs to the detriment of the farmer instead of to his benefit.

The present farm parity level of 73 percent is back to where it is the lowest received by the farmers in 35 years, a further indication that—contrary to administration contentions that farmers "never have had it so good"—the majority of farmers today, who went into the business in the last three and one-half decades, "have never had it so bad."

I hope that with this new notice that parity has dropped another percent, the President will give the same attention to the economic problems of the farmer that he is giving to the people from the metropolitan areas of the country and to those who march on Washington to protest their plight.

ICC EXAMINERS ACT IN PUBLIC INTEREST

Mr. METCALF. Mr. President, I was heartened by two recent actions of examiners for the Interstate Commerce Commission, John S. Messer and Nathan Klitenic.

Mr. Messer urged that ICC use its authority to require railroads to provide decent passenger service. The evidence in numerous ICC reports shows that railroads have downgraded passenger service, he said:

The time has come—

Said Examiner Messer—

when the Commission can no longer act like a county coroner and, acting upon death certificates in the form of section 13a(1) notices, inquire by an inquest into the cause of passenger train demise. With very few exceptions the subject trains are at least in a terminal condition when the investigation is ordered. The urgent need is for preventive medicine.

Examiner Klitenic recently issued subpenas directing five brokerage houses to name the actual owners of 1,000 or more shares of stock in several railroads. His action follows a similar move by him last year, in ordering major western railroads to divulge the names of their 30 largest beneficial shareholders and the size of their holdings. It follows the action of the ICC itself in stating that the name of Cede & Co. could no longer be used as a cover for hiding the names of the real owners of stock in railroads.

Mr. President, the current requirements of regulatory commissions on reporting principal owners of utilities are meaningless. The real owners of the stock usually are not listed. "Street names"—which are usually brokerage houses—are listed. Sometimes, as in the case of "Cede & Co.," coverup names are used.

I commend the ICC and its Examiner Klitenic for taking initial steps to determine the actual ownership of railroad companies. I hope they will persevere and succeed. I hope the Federal Power Commission and the Federal Communications Commission will decide to require the reporting of names and addresses of the principal beneficial owners of electric, gas, and telephone utilities. The public has a right to know the ownership and interlocks of giant utility corporations which have more of the characteristics and prerogatives of government than of free enterprise, risk businesses. Enforcement of regulatory and antitrust responsibilities requires that the utilities fulfill their advertised claims that they live in goldfish bowls.

Mr. President, newspaper readers will soon be reading some interesting editorials about railroad passenger service and rates. Some of the editorials will say that opponents of passenger discontinuance "are making a last-ditch stand against the facts of life" and question the railroads' responsibility to provide service for "the few travelers who still want to ride their trains." The editorials will invoke comments by a spokesman for the Southern Pacific whose failure to provide adequate passenger service led to Examiner Messer's action.

Another of the editorials soon to be read around the United States will contend that the railroads have to have an immediate freight rate increase if a curtailment in the freight and passenger service rendered to the public is to be avoided. That is a sorry argument. The railroads got a $300 million rate increase last year; nevertheless, during the last 6 months of 1967 they discontinued 75 intercity passenger trains. One hundred and eight discontinuance proceedings were pending at the beginning of this year.

These editorials were distributed to editors this week by two of the canned editorial factories financed in part by the railroad and electric power industries. One of the editorial factories is California Feature Service in San Francisco, a product of Whitaker & Baxter "serving over 600 California newspapers, radio, and TV stations with news and views of the State and Nation." The other editorial is from Industrial News Review of Portland, Oreg., which distributes weekly free editorials to some 11,000 editors. The dozen editorials distributed by INR include each week one on behalf of the railroad industry, two on behalf of the investor-owned electric utilities. Other editorials regularly laud the chain stores, right-to-work advocates, the American Medical Association, REA Express, Pan American Airways, the Committee of American Steamship Lines, the American Meat Institute, the New York Stock Exchange, the chamber of commerce, the oil, drug, and timber industries.

Another Whitaker and Baxter editorial distributed on April 29 along with the Southern Pacific editorial dealt with the administration's credibility gap, lauding the American Society of Newspaper Editors for its opposition to "a policy of obscurantism for its own sake." The editorial concludes:

> The confusion and disillusion and unrest that pervade this nation today dictates strong appeals for restoration of mutual confidence between people and their government.

I wonder how long the people and their Government must wait until the American Society of Newspaper Editors decides to study and report on the policy of obscurantism and misinformation, financed by key national industries and pressure groups, that is regularly reflected in news media which use the products of California Feature Service, Industrial News Review, American Press, and the U.S. Press Association, which advertised that "for $175 will send your message to 1,199 weeklies and 150 daily newspapers."

Mr. President, I ask unanimous consent to have printed in the RECORD the conclusions and recommendations of Examiner Messer in Docket No. 34733, Adequacies—Passenger Service—Southern Pacific Co. between California and Louisiana, served April 22, 1968; the April 19, 1968, statement of Examiner Klitenic; an article by William Reddig, Jr., entitled "ICC Acts To Lift Veil Obscuring Real Rail Owners," published in the December 5, 1967, issue of the Washington Evening Star; the April 29, 1968, Industrial News Review editorial entitled "They Can't Beat Inflation"; and the April 29 California Feature Service editorials entitled "Setting History Straight" and "That Credibility Gap."

There being no objection, the items were ordered to be printed in the RECORD, as follows:

DOCKET NO. 34733

CONCLUSIONS

The special study by the Stanford Research Institute, which the S. P. commissioned and paid for, recommended that the carrier "make more vigorous efforts to gain public support of their position". Obviously, the S.P. ignored this advice.

The examiner does not share the conclusions of the special studies that the decline in intercity rail passenger traffic will continue unabated. The patrons of today's passenger-trains, with very few exceptions, are those who either have no choice in their mode of travel or prefer rail travel over other options. Like gold mining of bygone days, the sand and gravel have been washed from the pan in a rushing stream of discontinuances, infrequent service, broken connections, lack of service facilities, inconsiderateness, too slow transit time, and the options of air, bus and automobile travel. The passenger group that remains today are those too old or too young to drive, the blind and infirm, those who are afraid of air and highway travel, or who appreciate the comfort and safety of train travel as compared to other modes.

If the defeatist attitude of the rail carriers could be overcome and reasonable efforts be made to improve the passenger service, a considerable portion of the lost patronage could be recovered. True, the S.P. had a very traumatic experience in 1950 when it invested millions of dollars in new equipment for a luxury train, since recovered for the most part through depreciation, at just the time when the national highway program was in high-gear and commercial aviation was rapidly rising as a result of the propjet and pure jet aircraft development. The S.P. has never recovered from that experience.

With the facilities and service what they are today, it is reasonable to conclude that the level of patronage on the nations railroads has reached bedrock. Only the desperate and obstinate remain. Further decline in passengers can only be brought about by further train discontinuances. There are many ex-patrons who would joyfully return to an efficient passenger service.

The evidence reflected in this record, as well as in numerous other reports of this Commission, justifies the conclusion that the S. P., and other railroads, has downgraded its passenger-train service and that this has contributed materially to the decline in patronage. Whether this lowering of service standards was brought about by a determination to exterminate a marginal or deficit operation or an honest conviction that there is no further public need for passenger-train service, is a matter of personal opinion. However, this Commission was not created as a moderator but as the guardian of the public interest in matters relating to interstate commerce.

In *Railroad Passenger Train Deficit*, (supra) the Commission adopted the passive role of moderator with absolute negative results. In that report, nine recommendations were made aimed at alleviating the declining passenger patronage. In essence these were: (1) repeal of the 10 percent Federal excise tax on passenger fares; (2) reduce Federal taxes; (3) reduce State and local taxes; (4) create State and local subsidies; (5) encourage more use of passenger-trains by the Post Office Department, Department of Defense, and other agencies of the Government; (6) railroad management to take steps to eliminate duplicate services; (7) experimentation by railroads with new types of equipment; (8) improve the attractiveness of railroad passenger service as a means of stimulating more traffic; and (9) that railroad management make studies aimed at fare adjustments, schedule changes for convenience of passengers, and higher quality promotional activities.

The only one of these recommendations that was not completely ignored was the first one proposed and that in itself is a sad story indeed. Effective November 16, 1962, Public Law 87508 repealed the 10 percent Federal excise tax on passenger fares. That very same day the eastern railroads increased their passenger fares 10 percent and thereby diverted this tax revenue into their own pockets. One month later 8 western railroads, including the S. P. and its subsidiaries, followed suit. So this tax relief which was designed to encourage passenger traffic by reducing the cost thereof to the passengers was never even felt by the public.

The time has come when the Commission can no longer act like a county coroner and, acting upon death certificates in the form of section 13a(1) notices, inquire by an inquest into the cause of passenger-train demise. With very few exceptions the subject trains are at least in a terminal condition when the investigation is ordered. The urgent

need is for preventive medicine. As the family physician guards against serious illnesses by advice and direction, so must the Commission administer and enforce all of the provisions of the act, including section 1(4).

It is quite obvious that the S.P., and most other railroads for that matter, will not voluntarily make the effort necessary to retain and regain the patronage on its trains by all the improvements necessary. The salvation of the nation's rail passenger service rests with the governmental agencies, national, State and municipal, including this Commission.

The examiner is convinced that there is a present need for intercity passenger rail service. He is also persuaded that the need for this service will increase and become a critical factor in the future transportation requirements of the country.

Projections from the most reliable sources, both government and private, indicate that the vast flow of automobile traffic today will triple itself in the next few years and the nation's highways, both existent and planned, will be totally inadequate to meet such a demand.

The airways are already crowded and the larger capacity commercial airliners soon to go into operation will not solve the air transportation problem to any great extent. The increased load facility of the larger transports will simply aggravate the ground capabilities of the terminals for parking, baggage handling, etc., but most important is the tremendous growth in general aviation operations. As the railroads lost the business traveler to the commercial airlines so the commercial air carriers are losing the business traveler more and more each day to the private company plane. The element of flexibility in time and motion that lured the businessman from the train to the highway is acting to move him from the scheduled airliner to his company plane which enables him to move when he pleases and change his travel plans even in midflight.

Regardless of the inflight speed of aircraft, as the holding-time over the fields increases, the congestion in and at the airports is magnified, and the burden of traveling to and from air terminals located further and further from the urban centers becomes a serious problem, in many instances the gap between rail and air transit time will grow more narrow until the comfort and convenience of rail travel from and to the heart of the cities, only a few minutes from office and home, will become most attractive, *if* the trains are maintained adequately and operated efficiently.

There is a limit to the capabilities and capacities of the highways and airways and the most economical and efficient means of moving people from one place to another, the railroad cannot be ignored. It is inevitable that the demands of the future will require its employment to a greater and greater degree.

However, the needs of the future cannot be met by the trains of today. They are too expensive and inefficient. The railroad labor practices of today cannot be endured if the needs of the future are to be met. The present day attitudes of rail management must be overcome and enthusiasm replace lethargy.

The need for passenger rail transportation at present and especially in the future is clear. The rail carriers have a duty to meet the need but not alone. Equal responsibility rests with the Congress, with this Commission, the States, the local communities, and the public.

RECOMMENDATIONS

1. For the Commission to recognize its jurisdiction and exercise its authority under section 1(4) of the act by requiring all passenger-trains operating in interstate or foreign commerce to observe, within 30 days after the effective date of the order in this proceeding, and pendente lite, certain minimal standards similar to the following:

(a) Trains operating over a line of railroad in excess of 250 miles must include in their consist facilities for meal service of no less a standard than that provided by an automat car as previously described.

(b) Every train engaged in transporting passengers in interstate commerce between the hours of 10 p.m. and 8 a.m. must include in its consist adequate sleeping-car accommodations.

(c) Trains whose transit-time is 12 hours or more must include in their consist adequate sleeping-car accommodations and a diner-lounge car as well as additional meal service when required.

(d) All cars used for the transportation of passengers must be equipped with air conditioning and heating facilities, lighting, rest rooms, and drinking water, all in good operational order. These cars must be maintained in clean and sanitary condition, both interior and exterior.

(e) The average speed of passenger trains must not be less than that of the carrier's most expedited freight train.

(f) No consolidation of passenger trains may be effected where the consolidation exceeds 1 hour in execution.

(g) No freight equipment other than so-called "head-end" cars may be added to a passenger-train consist without approval from this Commission.

(Note.—The standards set forth in (b) and (c) will not be applicable to an "all-coach train" service where the carrier provides alternate service with sleeping-car service. As an example, the Santa Fe's El Capitan and the Super Chief service.)

STATEMENT OF ICC EXAMINER NATHAN KLITENIC, APRIL 19, 1968

Gentlemen, predicated entirely upon my own conclusions as to the evidence necessary to a determination of certain of the issues involved in these proceedings and acting exclusively upon my own initiative, I have caused to be issued 5 subpoenas duces tecum. These subpoenas have been served upon Mr. Francis J. Lyons, partner, Hold and Company, Washington, D.C., Mr. Arnold McCullough, partner, Cudd and Company, New York, New York, Mr. T. C. Lewis, partner, Sigler and Company, New York, New York, Mr. J. Eugene Banks, partner, Brown Brothers, Harriman and Company, New York, New York, and Mr. James E. Thompson, President, Merrill, Lynch, Pierce, Fenner and Smith, New York, New York.

Each party subpoenaed is required to appear in these proceedings on June 10, 9:30 District of Columbia Daylight Saving Time, Washington, D.C., and bring with him records of his concern disclosing:

1. Records disclosing names and addresses of each beneficial owner of 1,000 or more shares of stock in the Union Pacific Railroad Company, the Southern Pacific Company, The Atchison, Topeka, and Santa Fe Railway Company, the Chicago and North Western Railway Company, and The Denver and Rio Grande Western Railroad Company and

2. For each of the railroads named above, records showing the number of shares of shock voted by each of the 5 concerns in the year 1967, and for each beneficial owner of 5,000 or more shares of such stock.

[From the Washington (D.C.) Star. Dec. 5, 1967]

ICC ACTS TO LIFT VEIL OBSCURING REAL RAIL OWNERS

(By William Reddig, Jr.)

Who owns the railroads?

The Interstate Commerce Commission moved in two separate actions yesterday to lift the veil guarding the names of persons owning blocks of stock in the nation's railroads, where control often forms a web which would be confusing even to a spider.

William H. Tucker, ICC chairman, said here that the cover name of Cede & Co. could no longer be used in reports of stock ownership filed annually with the commission.

This shadow firm had been used recently as convenience by the New York Stock Exchange in order to automate transfers of railroad shares. The puzzled ICC found Cede had become the major owner of four of the nation's six largest railroads.

In St. Louis, ICC examiner Nathan Klitenic went even further and ordered the major western railroads involved in the Rock Island merger case to divulge the names of their 30 largest beneficial shareholders and the size of the holdings. Previous reports usually showed up with listings of street names (brokerage firms) as the owners.

Tucker said the use of Cede & Co. by the exchange had "misleading effect." Reports for calendar 1967, to be filed by March 31, 1968, will at least have to list the brokerage houses formerly consolidated under the Cede name.

Cede, the reports indicated, had become the largest owner of Union Pacific stock and the second largest stockholder of the Pennsylvania, Southern Pacific and Santa Fe.

The stock exchange said it had used the company's name, beginning last year, to simplify computerized transactions between brokers. The actual transfer of securities in railroads was almost eliminated by the automatic bookkeeping process.

Involved in the Rock Island merger case are such big western roads as the Union Pacific, the Santa Fe, the Chicago & North Western, and the Southern Pacific, along with a dozen other connecting or competing railroads. Knowing who controls them is important to finding out where competing interests actually exist and their size.

Examiner Klitenic said that, in detailing ownership "street names are unsatisfactory." If the carriers can't get from brokerage houses the names of beneficial owners—who actually vote and receive dividends from the stock—"then you will have to go to the commission. This is their requirement," Klitenic said.

[From the Industrial News Review, Apr. 29, 1968]

THEY CAN'T BEAT INFLATION

With few exceptions, basic industries of most nations are owned and run by government. Instead of paying their way and contributing taxes for the support of government, they are supported by subsidies and are an onerous tax burden. This is the price of socialized industry. The one outstanding exception is the United States where basic industries are self-supporting, taxpaying enterprises. Instead of being a burden, they are counted upon not only to provide essential services but as a dependable source of tax revenue.

It is in the direct public interest for our basic industries to be able to earn a reasonable profit and thus continue to attract investors, produce goods and services, progress and pay the taxes so sorely needed today. These are the reasons why the petition of U.S. railroads for an immediate freight rate increase is of concern to everyone. The need for prompt action is best expressed in the words of various railroad officials. The chief executive officer of one road emphasized that immediate approval of rate increases by the ICC is "of critical and immediate urgency to this carrier if a curtailment in the freight and passenger service rendered to the public is to be avoided." Another warns that unless prompt action is taken, "the railroads cannot adequately meet the needs of this nation's commerce and the requirements of national defense—much less take our rightful place among other industries which have

earnings sufficient to attract institutional and professional investors."

Many have testified in the same vein. Reduced rail earnings and rising costs are beyond the reach of internal cost cutting. In the public interest, a higher rate level that will preserve the solvency of the railroads is required.

[From California Feature Service, Apr. 29, 1968]

SETTING HISTORY STRAIGHT

Some of the people who are making a last-ditch stand against the facts of life as they apply to railroad passenger traffic have resorted to the hoary argument that because there was federal subsidizing of transcontinental lines in the Civil War period the railroads are forevermore beholden to the few travelers who still want to ride their trains, no matter how outlandish the economic loss.

A reasoned answer to these critics has been made by a prominent railroad man in a letter to the San Francisco Chronicle. Setting the "subsidy" history straight, James G. Shea, general public relations manager for Southern Pacific, points out that the building of the Central Pacific Railroad, which later became the SP, was, in Abraham Lincoln's words, "a political as well as a military necessity."

Shea continues with the facts of the need for opening the west; of "land grants" in unsettled areas to insure that nearby government land would benefit by the coming of the railroad; of the return the government was given in half-rate transportation of freight, military goods and personnel for 80 years (until, after two World Wars, Congress decided the railroads had paid back the land values 9.6 times over). He points out that the "cash grants" by the federal government, in the form of a first mortgage, were all repaid at 6 percent interest by 1909. In addition, most of the best granted land was sold quickly by the railroads to settlers for as little as $1 an acre.

Fortunately for the country, the "military and political necessity" for once proved a mutual bargain.

As for the "public convenience and necessity" argument against abandonment of very costly long-run passenger service, Shea reminds that federal authorities assign air line routes to communities, and take them away, by applying a simple test: "Use it or lose it." Why the same test shouldn't apply to railroad passenger service now should be explained by nostalgic critics.

[From California Feature Service, Apr. 29, 1968]

THAT CREDIBILITY GAP

That the nation's newspapers are not merely in a snit when they complain about the Johnson administration's "credibility gap" was emphasized the other day by the American Society of Newspaper Editors.

The press quarrel with LBJ, the Society's Freedom of Information and Press-Bar Committee reported, is based largely on the fact that his administration "follows a policy of obscurantism for its own sake."

"All administrations manipulate the news to a greater or less extent," the report says, "and all have been known to conceal . . . and even lie about important information when it served their interests to do so. Coping with this is the task of every Washington reporter, and the ability to cope with it is what separates the men from the boys. But under LBJ the coping is immeasurably more difficult because official deceit is practiced both when there is a reason for it and when there is not."

That is a strong indictment, yet the confusion and disillusion and unrest that pervade this nation today dictates strong appeals for restoration of mutual confidence between the people and their government.

EIGHTH MEXICO-UNITED STATES INTERPARLIAMENTARY CONFERENCE—A BRIEF APPRAISAL

Mr. GRIFFIN. Mr. President, recently 17 Members of the U.S. Congress participated in an eminently successful meeting with Members of our parliamentary counterpart from Mexico.

The Eighth Mexico-United States Interparliamentary Conference, which took place in Honolulu during the Easter recess from April 11 to April 17, 1968, provided a unique opportunity for legislators of both countries to discuss, in an open and candid manner, the problems and issues which affect United States-Mexican relations.

The Mexican Congress was represented by 27 distinguished Members of the Senate and of the Chamber of Deputies. Their expertise and intense interest in the matters under discussion contributed greatly to the success of this year's meeting.

Mr. President, I ask unanimous consent that the names of the delegates appointed from Mexico be listed at this point in the RECORD:

There being no objection, the list was ordered to be printed in the RECORD, as follows:

LIST OF MEXICAN DELEGATES TO THE CONVENTION

SENATE DELEGATION

Senator Manuel Bernado Aguirre.
Senator Raul Bolanos Cacho.
Senator Oswaldo Cravioto Cisneros.
Senator General Hermenegildo Cuenca Diaz.
Senator Luis Gomez Zepeda.
Senator Arq. Luis Gonzalez Aparicio.
Senator General Cristobal Guzman Cardenas.
Senator Lic. Maria Lavalle Urbina.
Senator Lie. Rafael Murillo Vidal.
Senator Dr. Mario C. Olivera Gomez.
Senator Liz. Ezequiel Padilla Penaloza.
Senator Lic. Manuel Sanchez Vite.
Senator Lic. Manuel J. Tello.

CHAMBER OF DEPUTIES DELEGATION

Deputy Lic. Hesquio Aguilar Maranon.
Deputy Juan Manuel Berlanga Garcia.
Deputy Lic. Alberto Briceno Ruiz.
Deputy Lic. Maria Guadalupe Calderon Corona.
Deputy Jesus Elias Pina.
Deputy Lic. Joaquin Gamboa Pascoe.
Deputy Lic. Juan Manual Gomez Morin Torres.
Deputy Dr. Francisco Guel Jimenez.
Deputy Dr. Ignacio Guzman Garduno.
Deputy Lic. Octavio Andres Hernandez Gonzalez.
Deputy Lic. Victor Manzanilla Schaffer.
Deputy Lic. Ignacio Pichardo Pagaza.
Deputy Heriberto Ramos Gonzalez.
Deputy Rene Tirado Fuentes.

Mr. GRIFFIN. Mr. President, the work of the Conference was conducted in three committees—Political Affairs, Economic Affairs, and Social Affairs.

Much of the debate in the Economic Affairs Committee, to which I was assigned, concerned our mutual balance-of-payments problems. In order to earn much-needed foreign exchange, Mexico is heavily dependent upon the tourist dollar. But, at the same time, the United States is seeking to restrain foreign travel, by a combination of statutory and voluntary controls.

As a result of the Conference, I am confident that the Mexican delegates better understand the nature of America's fiscal situation and why it is urgent for the United States to embark upon stringent measures to stem the dollar outflow. I am certain also that, as a result of the Conference, the U.S. delegation has a better understanding of the difficult economic problems which confront Mexico.

The Conference also focused considerable attention upon the control of nuclear weapons. Mexico played an active role in drafting the nonproliferation treaty, and also helped to frame the Latin American nuclear free zone agreement. Despite such initiatives, the problems of nuclear arms control are likely to remain with us for a long time to come. While our two Governments may not always agree on specific issues relating to this problem, the United States can continue to learn much from Mexico's deep and continuing interest in preventing the spread of nuclear weapons and in utilizing nuclear energy for peaceful purposes.

Many other important questions were discussed by the committees. In the near future, the Committee on Foreign Relations will publish a report outlining the activities and accomplishments of the Conference.

Our meetings revealed the extent to which Mexican-United States relations have taken on a new and larger dimension. Many of our problems are no longer strictly bilateral. Rather, they concern our often differing approach to the complex array of world political and economic developments.

In part, this shift reflects the emergence of Mexico as a mature, modern state. And, in part, it also reflects the steady progress which has been made in overcoming the mutual problems that are bound to arise from time to time between two nations of unequal power which share a common border.

It would be misleading to suggest that the American and Mexican delegations found complete agreement on all outstanding issues on the agenda. Moreover, the Conference is not a policymaking organ; delegates cannot, of course, commit their respective Governments to a certain course of action.

But we succeeded in airing problems which exist and, hopefully, we succeeded in narrowing some of the differences. Through such meetings, I believe it has been possible to establish the understanding and mutual respect which is all important in averting unnecessary friction and in resolving conflicts as they arise.

Mexico today provides a unique example of how far and how quickly an industrious and determined people can advance along the path of economic and social development. Moreover, our neighboring country to the south has managed to progress without relinquishing her rich heritage, her traditions, and her national identity. In Mexico nationalism has taken a positive course; it has not stood in the way of modernization.

Mexico's proximity to the United States necessitates the maintenance of friendly relations between our two countries. The recently concluded Mexico-

United States Interparliamentary Conference will, I believe, help to strengthen the ties between us, at a time when the cause of international cooperation and good will needs a strong shot in the arm.

Mr. President, the acting chairman of the House delegation, Representative JAMES C. WRIGHT, JR., of Texas, and the chairman of the Senate delegation, the Senator from Alabama, Mr. SPARKMAN, addressed the plenary sessions of the Conference. I ask unanimous consent that their eloquent remarks, in addition to the joint United States-Mexican statement issued at the close of the Conference, be printed in the RECORD.

Additionally, a perceptive account of Mexican-United States relations was published in Reporter magazine of April 18, 1968. I ask unanimous consent that the article, entitled "Mexico: The Problems of Proximity," be printed in the RECORD.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

OF ONE BLOOD

(Remarks of Congressman JIM WRIGHT, acting chairman of House delegation at opening plenary session, Mexico-United States Interparliamentary Conference, Honolulu, Hawaii, April 13, 1968)

On Mars Hill in Athens almost 2,000 years ago, Paul of Tarsus spoke of a God who had "created *of one blood* all the nations of men for to dwell on the face of the Earth."

In the intervening two millennia, men have acted largely as though this were not so. Where we should have built bridges of understanding, we have erected walls of separation. Men have builded artificial barriers of alienation and hostility between the nations, between the ethnic races, between the social classes, between the economic strata, and between the generations of man.

Each has listened to the shrill voice of his own ambitions and his own desires and sought his own aggrandizement until, like the inheritors of the Tower of Babel, we seem almost to have lost the one thing which sets man above beast—the capacity to communicate with one another.

We speak words, but the words do not convey thought, because each of us wants so much to be understood and cares too little to understand. How sad—how infinitely sad—that my country at a time when it has attained an historic pinnacle of economic affluence should be permeated by waves of doubt and distrust and tremors of violence.

How ironic that at the very moment in history when Russians and Americans have learned to understand the stratosphere and the ionosphere, they still are unable to understand one another—and almost afraid really to try.

How pathetic that in Vietnam both sides claim the right to such terms as "liberation" and "self-determination," yet neither can hear the heartbeat of the other above the frenzied chatter of machine guns and the whine of bombs and mortars. And because they do not sit together and talk, men go on dying and infants crying at mothers' breasts. And blood comes instead of milk.

And yet how hopeful that here in Hawaii—Kipling to the contrary—East and West have met and their cultures blended. How prophetic that here in these beautiful islands men are setting aside the false divisions of racial origin; Polynesians, Orientals and Caucasians are working together as brothers, created "of one blood"; and here has risen the inspiration of a Center of East-West studies where lamps of learning can illumine the darkness in both directions.

How exemplary that Hawaii should have become the 50th State in the American family, thus demonstrating that men whose fathers have died together in wars can live together in peace, and together can wage the peaceful war against the ancient enemies of man—hunger and disease, ignorance and servitude, and even war itself.

How appropriate, then, that lawmakers of our two countries—Mexico and the United States—should be meeting here. In the brief years of our interparliamentary association together, we have found solutions for numerous problems which neither of us could have found alone. Is it too much to hope that this experience of ours may be a small example to a strife-torn world?

As friends and brothers we have settled the ancient dispute over the Chamizal and stabilized our common border.

In the past four and a half years, President Lyndon B. Johnson has had six personal meetings with Presidents Adolfo Lopez Mateos and Gustavo Diaz Ordaz. This is more frequent personal contact between the elected leaders of our two nations than has occurred in our entire preceding national histories. There is an ever-increasing interchange of private citizens between our two countries. And the total volume of trade between our nations increases annually.

We have labored together to extend the Inter-American Highway, a ribbon of Hemispheric union and an artery through which pulsates an ever-greater flow of commerce. Mexico has paid for the entire portion of this highway which passes through the Mexican Republic.

During the past five years, under the Alliance for Progress we have worked together on agricultural and housing loan programs to the extent of $50 million.

Together we have applied the skills of engineering to share our waters, the Colorado and Rio Grande, and to preserve them pure from destructive minerals.

We are launching together a pilot project employing nuclear power to convert salt water to fresh, a beacon to the growing population of a hungry world that the children of Earth possess the collective wisdom—if we have the will—to make of the atom man's servant, and not his destroyer.

Within the past few days our nations have signed at Mexico City a non-proliferation treaty preserving the New World as a sanctuary from the atom's destructive might. What an inspiration to divert this marvel of science from destructive uses, and let it help us instead to water the parched and thirsty land, that foodstuffs and fibres may grow, the naked be clothed and the hungry fed.

These things are but earnest of what two nations can do—and tiny grains of sand upon the continent of what the world can do—when we learn the simple wisdom that we are "created of one blood."

The original inhabitants of these islands came in boats across many miles of ocean from Tahiti. After many generations, they were joined by waves of migration from the United States, from China, from Japan and Europe.

Whether the first Americans came across the Bering Strait from the Asiatic mainland, or in long barks from these Pacific Islands, or across the Cape of Good Hope from North Africa—or a combination of the three—it is clear that there was more cross-fertilization of blood and of ideas than was once commonly believed.

The Totem Pole appears in Alaska and in New Zealand. Pyramids were built by the Egyptians and by the Mayas whose facial features resemble art work on the Egyptian tombs. Ceremonial costumes and tribal rites of the Aztecs bear a startling resemblance to those of the early Hawaiians.

If we begin in Northern Scotland or in the Scandinavian lands and come Southward into Equatorial Africa, observing the gradual changes in skin pigmentation and physical features of the people, we get the clear impression that these external and superficial distinctions are chiefly the result of long generations of exposure to climate.

In view of these observations, is it too much to say that all the nations of men were truly created "of one blood"? Surely our elemental wants are basically the same—freedom from need and from danger, from fear and from oppression—and the hope that the lives of our children may be better than our own.

Last September when Hurricane Beulah smote the coastal lands along the Gulf of Mexico with its awesome fury and left along both sides of our border a path of human wreckage in its tidal wake, it demonstrated once again that Nature has no respect for the unnatural boundary lines which man in his folly has drawn.

In the brotherhood of suffering which comes in a common disaster, we declared an "Open Border Policy." Crossing the swollen river whose muddy waters obliterated the national boundary line, rescue crews in helicopters lifted stranded families away from the cruel crest of the flood and carried them to safety, not stopping to ask their nationality.

During the height of that disaster, I visited a place called Camp Ringo where a military barracks had been converted into a refugee camp to house and clothe and feed several thousand victims of the flood. Looking at the shining eyes and happy countenance of a little Mexican boy with oatmeal on his face, the Captain of the National Guard smiled and said to me:

"A hungry child is exactly the same the world over."

The Captain was a Negro, and I a Caucasian. But the little boy was just a little boy.

And in that moment the three of us were truly "of one blood."

If this be true, then those of us to whom is given the trust of elective leadership must lead in the light of that truth.

For unless the spirit of man be elevated above the lust and hunger of the beast, men will go on hating and all our learning will get us only more sophisticated ways to kill and to frustrate one another's hopes. It is the task of leadership, then, to lift the vision of man to search for understanding, and for peace on earth.

In the midnight of despair, we must be apostles of the dawn. When the black gales of strife among men howl the loudest, let ours be the voice of the sunrise, as together we work for the day when love will overcome hate, hope will triumph over fear, and faith will replace distrust.

When we all can think and feel and behave as men "of one blood," then truly it will be a day of Peace on Earth, Good Will to Men.

EIGHTH MEXICO-UNITED STATES INTERPARLIAMENTARY CONFERENCE

(Remarks of Senator JOHN SPARKMAN at the closing plenary session, Honolulu, April 16, 1968)

Dr. Guel, Senator Aguirre, ladies and gentlemen, it now becomes my duty, at once pleasant and sad, to bring to a close another Conference of the Mexico-United States Interparliamentary Group.

The duty is pleasant because the Conference itself has been pleasant. We arrived here good friends and we leave better ones.

The duty is sad because no one likes to say good-bye to a friend or to bring a pleasant experience to an end.

But more than this, my duty this afternoon is a satisfying one, because the Conference itself has been satisfying—and successful. We have covered in an eminently satisfactory manner all of the items on our agenda, as well as some which weren't there but which arose in the course of our discussions.

It should not be surprising to any of us that we have not settled any of the problems

which were before us. We did not expect to do that; indeed, we have no authority to do that. In accordance with our rules and traditions, we have taken no votes; we have passed no resolutions. Wnat we have done is to clear the air. We have explained frankly and honestly to each other the problems we each face and our respective points of view toward these problems. If this has not in itself solved those problems, it has hopefully made them easier to solve, or at least to live with.

One of the things which has struck me about this conference in comparison with some of our past conferences, is the extent to which we have so few bilateral problems. Most of the problems which now concern us are bigger than the United States and Mexico, and cannot be settled by the United States and Mexico acting either alone or together.

We have talked, for example, about the control of nuclear weapons. If this were a problem which could be settled by the United States and Mexico, it would be no problem at all. This does not mean, of course, that together we cannot contribute to a settlement, aand we have already made some progress in this direction. I want to take this opportunity to express the deep appreciation of my delegation, and I am sure of my Government as well, for the very helpful initiatives which Mexico has taken in bringing to fruition the Treaty for a Latin American Nuclear Free Zone and in advancing the Geneva negotiations for a general nuclear non-proliferation treaty.

We have also talked at some length about our mutual balance of payments problems. I am frank to say—there is no use in deceiving ourselves about it—that the United States faces a fiscal and monetary crisis. I am confident that we will deal successfully with that crisis. We in the United States understand the concern of you in Mexico that the measures we may feel compelled to take will complicate your own balance of payments. We are grateful for your reciprocal understanding of our position. And we are especially grateful for the strong support which the dollar received from the Mexican Treasury and the Mexican Government during the recent international gold crisis.

This is another example of a problem which we both face but which we cannot solve acting either separately or together. It requires broader international action.

There is great significance in the fact that the problems which concern us are moving from the realm of our bilateral relations to the world stage. It means not only that our bilateral relations are improving. It means that we can each devote a larger share of our energies to attacking these broader problems. The United States delegation derives particular satisfaction from the presence at this conference of two outstanding Foreign Ministers of Mexico—Senator Padilla and Senator Tello—who, after having already made lasting reputations as statesmen on the world stage, have turned their attention to legislative matters. It does honor to us all that two such distinguished men, with their positions in history already secure, are still willing to give the Congress of Mexico—and through this meeting the Congress of the United States as well—the benefit of their great wisdom and experience.

Happily, not all of the items on our agenda have been so intractable as the control of nuclear weapons and the re-ordering of the world's monetary system. One of the more agreeable matters has been the forthcoming Olympic Games. My delegation has been most gratified to learn in greater detail about the plans for these Games and especially about the Cultural Olympics which will be held in conjunction with them. What a splendid and imaginative idea it is to have a Cultural Olympics. I hope it will become a firm tradition—another monument to Mexican leadership. It has the potential of becoming even more valuable and important than the athletic events.

Finally, I want to express my delegation's deep appreciation to the entire Mexican delegation which, as usual, has come well prepared and has presented its points of view with clarity, with frankness, and with friendliness. I particularly want to say what a pleasure it has been to work with you, Senator Aguirre, and with you, Dr. Guel.

And so, it is with some sadness but a great deal of satisfaction that I declare this Eighth Mexico-United States Interparliamentary Conference officially adjourned.

JOINT STATEMENT OF HEADS OF DELEGATION, MEXICO-UNITED STATES INTERPARLIAMENTARY CONFERENCE, HONOLULU, APRIL 16, 1968

Concluding this 8th annual Interparliamentary conference between Mexico and the United States, the heads of the two delegations find themselves in a truly remarkable degree of agreement and join in making the following statement.

We observe with deep mutual gratification the constantly increasing friendship and progressively improving relations between our two countries.

We take pride in the amicable solutions which our two countries have found in recent years to a number of mutual issues, such as the settlement of the previous disagreement over the Chamizal, the purification of the waters of the Colorado and Rio Grande Rivers, and the improvement of conditions along our common border.

We find ourselves in agreement with the objectives of the Treaty of Tlatelolco, Protocol II of which has been signed by the United States, thereby contributing to making Latin America free of nuclear weapons.

We hope and believe that the Non-Proliferation Treaty which has been under consideration at Geneva and which will be discussed at the next session of the United Nations will be a further step in the direction of effective disarmament and world peace.

We are encouraged by the strengthening of the Organization of American States and look forward together to progress in the mutual struggle against poverty and illiteracy in the hemisphere and to a time when the bonds of friendship will embrace all the nations of the hemisphere in a family united by common hopes for the future of man.

We are pleased with the increasing two-way flow of official and private visitors, of cultural and educational interchanges between our two countries, and the increasing volume of trade, travel and communication.

We express our appreciation to President Lyndon B. Johnson of the United States for meeting with us informally during his visit to Honolulu. We point out that our conferences have always met with the Presidents of our respective countries—a further manifestation of the good relations which exist between the Executive and Legislative Branches of our two governments.

Finally, we wish to express our deep appreciation to the Governor of Hawaii, the Honorable John A. Burns, and to the people of Honolulu for their cordial hospitality during our stay, which has been both pleasant and productive.

MEXICO: THE PROBLEMS OF PROXIMITY

(By Gladys Delmas)

MEXICO CITY.—"I believe in the Mexican peso as I believe in the dollar," Minister of Finance Antonio Ortiz Mena said during the "gold rush" last November while the central bankers of the western world hemmed and hawed about how firmly and under what conditions they would support the price of gold and the parity of the dollar. Then he dramatically opened the vaults of the Bank of Mexico, offering ingots to all comers. Thus Mexico, alone among nations, laid on the line its entire gold reserves—$260 million. The sale of gold coins has always been free in Mexico, at a slightly higher price per ounce than bars, which are sold only to registered jewelers and manufacturers. It was at the coin price that the ingots were offered when the coins gave out. Nevertheless, this was an extraordinary gesture: the difference in price would not have protected Mexico had the dollar fallen victim to the gold rush. With all eyes on Europe, we hardly found time to say "Thank you."

Latin America so often appears to us just a vast problem area—walls scrawled with "Yanqui No!" smashed embassy windows, aid that never seems to accomplish its purpose—that we easily overlooked Mexico, a stable, steadily growing country, still relatively poor, of course, but at this stage of its development we no longer grant it Food for Peace, and AID is all but phased out.

One reason why Mexico is so different from the other countries of Latin America is a simple geographical fact: we have a long common frontier. That much of the southwestern United States was once Mexican and that we acquired it by imperialist methods—we called it "manifest destiny" then—is no longer a rankling issue between us. Mexicans are realists who recognize a fait accompli; they recognize too that we are not likely to repeat the grab. Our proximity, however, implies other perils and problems for both nations, but it also brings benefits and stimulates reactions that have had an important and healthy influence on Mexico's own development.

THE MAGNETIC BORDER

The border itself is a problem: it separates such vastly different cultures, such striking differences in the standard of living, even though the Mexican side is generally more prosperous than the rest of Mexico. Vast deserts separate it from the heartland, making it almost another Mexico. Thus the attraction of American goods across the border is tremendous; the dollar drain from shopping expeditions "to the other side" wipes out at least half of the income Mexico collects from American tourists. In spite of their relative prosperity, the Mexican border towns look poor and miserable in comparison with their twins on the American side. Some, such as Tijuana, are overtly vice districts. Most are clogged with unemployed, usually unskilled farmers from the interior hoping for a chance at the high wages (by their standards) so temptingly close.

In the last few years, the Mexican government has tackled the problem with imagination and zeal. The first program, started some years ago under President López Mateos, sought to present a more attractive image of Mexico. Handsome new gateways were built to expedite customs and immigration formalities; the Mexican end of the international bridge at Laredo, for instance, is now far more splendid and efficiently conceived than the American one. New hotels and motels sprung up with government aid, as luxurious as any in the United States; modern shopping centers, selling the best of Mexican crafts rather than the usual tourist junk, have been opened; streets have been paved and lighted, conference halls built to encourage international meetings and others between Mexican businessmen from the interior and their northern fellows, as well as Mexican cultural events to link the Americanized border with the "real" Mexico.

To stem the tide of dollars across the border, Mexican manufacturers are offered tax concessions, privileged freight rates, and promotional campaigns as incentives to develop the rich border market; recently there has been a campaign against professional smuggling. The national government has just set up a Bureau of Standards whose seal guarantees that goods are of international quality. Thanks to such measures, the

sale of Mexican goods along the frontier has more than tripled since 1960.

In the spring of 1965, Minister of Industry and Commerce Octaviano Campos Salas made a dramatic proposal. Why shouldn't Mexico, with its abundance of cheap, potentially skilled, and easily trained labor, compete with Hong Kong, Taiwan, and Japan in the manufacture of labor-intensive goods? The frontier is crowded with would-be emigrants and other unemployed; Mexico lacks the capital to set up such industries on its own. Thus a new organization was created, the Frontier Industries Program, in which the whole process of investments and imports is reversed: foreigners may own one hundred per cent of a company; they may bring in, duty free and with a minimum of formalities, machinery, raw materials, parts for assembly—but all their product must be exported. Since the fall of 1966, some eighty new companies have been set up, providing some six thousand new jobs, and many others are knocking at the door. The minister has recently urged Mexican capital to enter the field, and even suggested that such enclaves be established elsewhere in the country.

Such a program presents great advantages for certain types of American industry, particularly for the assembly of small electronic units, or for the needle industries, which may use sophisticated American textiles cut to American patterns. With easier supervision and lower transport costs than in the Pacific area, all-American materials can thus be used. The possibility of all-American ownership is another advantage that would not be permitted in Japan, for instance. "The Americans have lost their world leadership in the production of cheap radios, tape recorders, portable TV sets, and so on," a young Mexican official said to me. "Thanks to this program, they can produce as cheaply as Japan—if not more cheaply. It's a bonanza we're giving them."

There are drawbacks. American labor unions are firmly opposed: they see a parallel to the move of the textile industry from New England to the South. The AFL–CIO resolved at its latest Miami Beach convention to exert all possible pressure to obstruct the program. Mexican labor unions point out, however, that far from harming American labor, the program should help it by creating new jobs for the manufacturing of parts on the American side, particularly in the southern part of Texas, which is a depressed region. The labor issue is certainly one reason why the big American companies have not yet come in in force: they prefer to use subcontractors where their own labor relations are not in jeopardy.

In any case, even these small beginnings are having some surprising effects. In Tijuana, I was told, there are noticeably fewer women walking the streets, and it is becoming difficult to find servants. Neither pressures from American unions nor sporadic U.S. attempts to limit the rights of registered Mexican laborers who commute daily to the other side are likely to provoke an official protest. These are purely matters of U.S. concern, Mexico feels, and it is one of its basic principles that no state shall interfere in the internal affairs of another.

A BOON TO UNITY

But if Mexico refrains from asking privileges for its citizens in other countries, at home its policy is among the sternest in the world in defending its own. Here its past experience has provided a never-forgotten lesson. In 1910, when the revolution started, almost all the basic structure of the economy—railroads, mines, electric power, telephones, commercial agriculture, and oil—was in foreign hands, chiefly American. Any government measures not to their liking were immediately protested by their embassies, and the Mexican government usually was obliged to accede. The economy was, as a consequence, almost entirely oriented toward export, so that foreign investment was of relatively little benefit to the Mexicans themselves. However, a few energetic Mexicans were beginning to build for local consumption; the first large-scale paper mill in Latin America was built in 1894, the first steel mill in 1903.

Nevertheless, the first generation of economists who emerged after the bloody years of revolution felt obliged to go slowly toward their goal of Mexican control of Mexican industry. It was not until the oil companies openly flouted Mexican law and the decisions of the Mexican Supreme Court that the first dramatic step toward "Mexicanization" was taken and the oil fields expropriated. This act, more than any other, contributed to the uniting of all Mexicans behind their government and to a new sense of pride in their own capacity and national identity. Its success, in spite of political and even military threats, an international boycott, a credit freeze, and the massive departure of foreign technicians, encouraged the government progressively to gain control of other basic sectors of the economy and to become progressively more stringent in allowing foreign entrepreneurs into the country.

Today, more than ninety per cent of investment in Mexico is Mexican, including all public services and the basic sectors of industry. Agricultural and financial activity are, by law, exclusively reserved for Mexicans; industries closely connected with the basic sectors and the exploitation of "non-renewable resources" must have a majority of Mexican capital. Only when a foreign company can offer new technology, possibilities for export, a significant number of new jobs, and the stimulation of ancillary industries—or when Mexican capital has proved unwilling to undertake the risks involved—is it allowed to maintain full control. Even then, only a small number of foreign managers are allowed into the country for the limited time considered necessary to train Mexicans to replace them. Compare this situation with that of Canada, our other neighbor, where foreigners, mostly Americans, own an estimated seventy per cent of the oil and gas industry and sixty per cent of the mining, and control sixty per cent of manufacturing. Yet in spite of all these restrictions, more severe than those in any Latin-American country, during the past five years Mexico has received more foreign capital—investment and loans—than any other.

Mexico may restrict the entrance of the investment dollar, but the tourist dollar is ardently wooed; it is the most obvious benefit from our proximity. In spite of the outflow across the border and the increasing tendency of Mexicans to travel to far places, which is beginning to worry the Mexican government as it does our own, the net income from this "industry without chimneys" was about $400 million in 1966. This provides that extra influx of capital, without interest or amortization, which economists say is essential for successful development. Tourism also provides much new employment, important in a demographically exploding country, for much less investment per job than industry would require.

Another immediate benefit of proximity is the military umbrella. Mexico is proud that it spends less than ten per cent of the federal budget for the military—who, in any case, are engaged more in civic-action programs than in martial activities. It owns no sophisticated "hardware" and the government has just declared—in striking contrast to most of South America—that henceforth it will buy no arms whatsoever abroad. It is proud of this pacifist stand, but it sometimes forgets that the power and friendship of its neighbor contribute, in some degree at least, toward making it possible.

Our protective military might and Mexico's dependence on U.S. trade, which is over sixty per cent of its total, have made it politically important for Mexico to adopt as a counterreaction an independent policy in foreign affairs and a set of principles and ideals to which it can refer with some consistency as justification for its position. It is determined, above all, not to be a satellite of the United States. Thus, in spite of our cajolements and a majority vote in the Organization of American States to expel Cuba, Mexico maintains diplomatic relations with the Castro regime.

Mexico was among the most vocal of the Latin-American countries in deploring our intervention in the Dominican Republic. It also has been among the earliest and most enthusiastic supporters of some hemisphere programs—the Latin American Free Trade Association (LAFTA), for instance—which we originally opposed, however useful we think them now.

Because of this independence and its resounding success at home in managing its political and economic affairs, Mexico seems cut out for leadership in Latin America. This it firmly rejects. One of the principles born of its painful past to which it constantly refers is the equality of nations, great and small. During the recent visit of the President of El Salvador, Mexican President Diaz Ordaz emphasized this theme over and over: "We wish to co-operate with you, but not as a Big Brother. We are not seeking leadership of any kind, anywhere."

From its old experience with foreign companies, particularly during the oil crisis, has come Mexico's defense of the "Calvo clause," which it emphasizes more than any other country. This concept grew out of a treatise on international law written by an Argentine, Carlos Calvo, in the nineteenth century. As Mexico has interpreted it, it means that no foreigner, in any circumstances, may invoke diplomatic protection but must seek redress through the local courts, with no more rights than local citizens. The legality of this concept has been debated by international lawyers for years—with the opposition citing the incompetence and corruption of local justice and the reluctance of investors to depend on it. Mexico does not argue; it simply demands a signature agreeing to the doctrine from any prospective investor. But it has also instructed its embassies everywhere to observe the same rule—no Mexican may appeal to them for extralegal help.

Examples of this reciprocity are numerous. Since Mexico so objects to fully owned foreign companies within its own borders, Mexican businessmen when investing abroad, particularly in Central America, are urged to look for local capital and accept a minority interest. In most cases they have complied. Mexico asks that foreign investment contribute to its own technology: the government-owned railroad-car factory recently won a bid in a worldwide competition for the delivery of $11 million worth of cars to the Colombian railroads, not only because of generous credit terms but more particularly because forty per cent of the manufacturing is to be done in Colombia under Mexican technical supervision, thus aiding the Colombians to set up their own industry.

THE MEXICAN VIRTUES

If our proximity has thus stimulated Mexico to define and maintain a more consistent foreign policy than any of its neighbors, it has also been useful in provoking a deep sense of "Mexicanism" at home. American ways are, of course, creeping in. But all traditions that are not directly antagonistic to the modern world that Mexico longs to enter are lovingly preserved. The *charros* still ride in their spendid silver-spangled outfits—although today they are more often bankers than cowboys. The *mariachis* still serenade a loved one in the early dawn of her saint's day, even though they awaken a whole apartment building in the process.

Fiestas are still fiestas, even though sound management of family finances should often preclude them. And bread has not completely replaced the humble tortilla, although most Mexicans can now afford it. Even those of pure Spanish blood are proud of being Mexican and of the unique way of life that has developed here. One important result of this strong sense of national identity is that there is no "brain drain." Students eagerly seek higher education abroad, but they come home.

This nationalism, however, is far from xenophobic: in spite of its relative poverty—a per capita income in 1966 of $455 as compared with $751 for Venezuela and $709 for Argentina—Mexico is far more generous than any other Latin-American country. Even the United States is in Mexico's debt in several projects, one of the most striking of which is the Third Country Training Program for students from the rest of Latin America. Students chosen by U.S. Agency for International Development offices in other countries are sent to Mexico, their expenses paid partly by their country of origin and partly by AID. Mexico offers them free tuition and other facilities—in some cases a monthly stipend—at an annual cost that the United States estimates to be about $5 million. Mexican students are being turned away from local universities for lack of room, while each year some ten thousand foreigners are occupying class space that might otherwise be used by Mexicans. The advantages Mexico offers as a training center for Latin Americans are numerous: a language and culture similar to their own, a technology better adapted to their needs than ours is, and a living example of how it can be used to promote healthy, steady growth. Besides, because of Mexico's stringent immigration regulations, these students must go home again.

Mutual agricultural projects have developed from proximity, too. The campaign to eradicate foot-and-mouth disease, essential to keep our own herds healthy, is a never-ending battle; a team of U.S. and Mexican experts work together still, examining suspicious cases and guarding the ports of entry. Eradication of the screw worm and the fruit fly is a current objective, through use of the same co-operative methods.

The great success story today, however, comes from Mexico's own agricultural complex for education, research, and extension training at Chapingo, near Mexico City, started in 1923. The work done there with modest facilities has shown striking results: from 1943 to 1963, Mexico more than doubled its food production; corn yields rose from 4.4 bushels a hectare to 32. The average daily calorie intake rose from 1,700 per person to 2,700; Mexico is no longer one of the hungry countries.

Impressed by these results, the Rockefeller Foundation in 1963 donated funds to set up the International Center for Corn and Wheat Improvement at Chapingo. Seventy per cent of the total, however, came from the Mexican government and from loans made to it by the International Development Bank and AID. The first results have been remarkable: a new strain of short-stemmed wheat which, in a couple of years, has made Pakistan practically self-sufficient and has greatly improved yields in India; hybrid corn that has done the same in Africa and Southeast Asia; a new type of potato now grown in twelve countries in various parts of the world. In collaboration with the University of Manitoba, a new cereal is being created that will have a much higher percentage of certain amino acids, necessary for a balanced diet, than any now known.

The activities of the United Nations here are another example of Mexico's eagerness to share. Nearly half of all U.N. Latin-American programs for development, economic training, and research are located in Mexico City. When I asked why, I was answered by a flood of reasons. One is Mexico's generosity: from 1950 to 1967, the government contributed $2.7 million to these projects in addition to its normal quotas. A more mundane reason is that there are no exchange problems, and the fact that Mexican professors keep their students at the grindstone—no mañana here. But above all, I was told, Mexico is much more in touch with the modern world than are its neighbors to the south.

Herein lies, I believe, the greatest benefit that Mexico receives from our proximity. Other Latin-American nations are growing and industrializing, but the growth is haphazard and unorganized. Argentina provides tremendous incentives for new industry, only to find that there is insufficient electric power and inadequate transport. Brazil is not only letting its proud new capital, Brasilia, grow shoddy for lack of maintenance but has allowed the splendid highway over the mountains from São Paulo to Santos, hailed in its time as a great feat of engineering, to grow pitted and dusty. Peru, joyful in the bonanza of its new fish-meal industry, has overfished its waters, thus starving the birds who provided precious guano; almost all the protein-rich fish meal is exported as cattle food, while half the population is on the verge of starvation.

Only Mexico is conscious of the need for priorities—electric power before industry, roads before cheap automobiles, people before profits. Mexico has the finest network of highways in the hemisphere, and washouts caused by the deluges of the rainy season are repaired within weeks. Only Mexico has developed its social program—social security with emphasis on the whole man and not just medical care and pensions, profit sharing in industry, rural improvement—along with its growing prosperity. Only Mexico has a clearly defined policy in regard to the relative roles of state and private enterprise in the development process. Although Mexico constantly reiterates that it is not trying to become a minor United States, our proximate example has set it on the path of building a modern industrial state through uniquely Mexican methods. Mexico is still a relatively poor country. But in the clarity of its goal and its steadiness in pursuing it, it is the only really modern nation in Latin America.

AIRPORT SAFETY

Mr. JAVITS. Mr. President, we are all quite aware of the tremendous new demands on our existing airports and air safety system which will be made within the next decade. In view of what I have long felt to be an inability within the administration to propose any constructive airport development plan, last August I introduced a proposal—S. 2379—calling for an airport development fund comprised of various user taxes to be used to expand and renew our hub airport facilities. I am still aware of no administration plan which comprehensively deals with airport development.

On the other hand, there does seem to be a significant amount of activity in the air safety field. The U.S. News & World Report in its May 6, 1968, edition, discusses some of the new safeguards which hopefully will be introduced in the near future to improve air safety.

I am also concerned with the apparent inability to deal with noise abatement around airports. We must find some answers to the noise problem since the SST and other supersonic planes may soon be flying over our populated areas.

It is still my view that until a fuller effort is made to develop our ground facilities we will never be able to have the efficiency and safety which we require.

I ask unanimous consent that the U.S. News & World Report article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

BIG CHANGES COMING FOR AIR TRAVELERS

Big changes are in prospect for the air traveler within the next 10 years, if forecasts given to the airline industry by one of its top authorities prove to be correct.

These forecasts, prepared for the International Air Transport Association by J. T. Dyment, chief engineer of Air Canada, hold out this prospect for the passenger of the future—

Flights will be not only faster and more comfortable, but also far safer.

Plans for flying will almost never be upset by bad weather or mechanical trouble.

The plane a passenger rides in will actually fly itself just about all the time, even when landing in snow or fog. Navigation will be completely automatic.

New safeguards will be incorporated into fuels, engines, other features of the aircraft to guard against fire and failure due to stress and stain.

Fires, when they occur, will be far less dangerous than they are today. Collisions in midair will be less likely in spite of a vast increase in traffic.

CHANGING AIRCRAFT

A completely new type of aircraft will whisk travelers between neighboring cities and from point to point within sprawling metropolitan areas.

Some of the changes on which Mr. Dyment is counting already have begun to take shape.

A new type of jet engine, the airline expert points out, is being designed for the jumbo jets that are due to fly next year. These new engines will be more powerful without being heavier or longer. They're expected to use about 5 per cent less fuel for a given trip than engines that would have to be built on the basis of current designs.

Planes equipped with these engines should be more economical to operate—a factor that will help hold down passenger fares.

The new engine, because of changes in design, will also be much less likely to develop acute indigestion if it gobbles up a bird or two.

FIRE THREAT REDUCED

A major development in the fuel system within the next few years is expected to reduce the threat of fires in case of a crash landing or if a leak develops in the fuel tank. Here, the industry is informed, there are two avenues to improvement:

Carry fuel in jellied form, so it will not spray out of ruptured tank or give off flammable vapors.

As an alternative, fill the fuel tank with a foamy plastic that reduces the capacity of the tank only 2 per cent but still keeps fuel from spraying if the tank ruptures.

Experiments with both approaches to the problem are going on right now.

Each passenger will have a heat-resistant plastic bag, small enough to be stowed in a cigarette package but large enough, when unfolded, to retain the air needed to breathe for five or 10 minutes. This device, developed by the Federal Aviation Administration, will give people more time to get clear of a plane in a crash accompanied by smoke.

IMPROVED SEATS

Draperies and upholstery will be of materials that will not give off harmful vapors in case of fire. Backs of seats and instrument panels are to be redesigned to reduce the dangers of head injuries in accidents.

Crashes, however, will be much less likely for a variety of reasons, the experts say.

For one thing, there is to be a massive improvement in maintenance.

Airlines already have discovered that the condition of the combustion chambers in an engine can be checked by wrapping the engine with photographic film and inserting a radioactive isotope. The result is an X-ray film showing any failures or cracks long before they are large enough to cause trouble.

Another device holds promise along the same lines. Long bundles of optical fibers will be inserted into the airframe to enable mechanics to inspect the inside of the wing and other inaccessible parts. In these fibers, light rays actually bend around corners.

With such aids, airlines will not have to break down engines at periodic intervals. Maintenance, as a result, should be better and more economical.

Multichannel data-transmission systems will enable a few cables to replace the many miles of complex electrical wiring that can cause trouble nowadays.

NEW WARNING SYSTEM

Sensing devices, in far greater numbers, will give warning of impending trouble. And the airliner will have the ability to switch automatically from a faulty mechanism to a spare, backup unit while in flight. As Mr. Dyment puts it:

"Practically all units being designed for the future will have this self-test, self-monitoring fault isolation, automatic-alternative operation, and fault-indication capabilities built into them."

In operation, the airliners will become almost automatic from takeoff to touchdown.

Navigational information will be beamed to the plane from ground stations along the route. A computer aboard the plane will convert these data into a precise location, which will be displayed before the pilot on a moving map of the area over which he is flying. Thus, the pilot will always know where he is in relation to mountains and other obstacles.

The map will continue to unfold on a cathode-ray tube until just before the plane descends for a landing.

DETECTION OF OTHER PLANES

All airliners will be equipped with devices to detect other planes in the vicinity, compute their speed and course, give warning of a possible collision, and in all probability feed the necessary change of course or altitude to an automatic pilot for instant evasive action.

Equipment of this type has already been tested in some planes.

Instruments in the cockpit are to be improved, especially the altimeter, which, in the past, has been the source of errors in determining altitude.

At airports, the flight paths of all planes taking off and landing will be worked out by computers to get them in and out of the areas as fast as possible and avoid collisions. Planes will be under "positive control" of the control towers at all times.

SEEING THROUGH FOG

Special radar units are expected to give pilots a good picture of the area about a mile and a half ahead of the aircraft even in the worst weather.

Runways will be grooved to reduce the hazards of skidding under icy conditions. Urea pellets, instead of sand, will be used to remove ice and snow.

In these highly sophisticated, almost automatic planes of the future, the pilot, according to Mr. Dyment, will no longer be regarded as a kind of airborne chauffeur. Rather, he will be considered to be "the manager of a 10-million to 40-million-dollar investment." He will be able to fly the plane in emergencies but should rarely find it necessary to do so.

How will the pilot keep his hand in, if he rarely handles the controls? Mr. Dyment told the airline executives that the answer to this question—and to the future training of pilots—lies in advanced on-the-ground trainers, which will simulate actual flight "so closely that training with a big transport airplane can be eliminated, except for check-outs on the nonhazardous procedures."

Recently, an airliner crashed into a motel in New Orleans while executing an emergency training maneuver.

New types of aircraft will come into use, besides the jumbo jets, airbuses and supersonic transports now under development, Mr. Dyment predicted.

For relatively short hops—up to 300 miles—there will be a hybrid craft—half helicopter, half prop-driven plane. A rigid rotor, with about 30 per cent fewer parts than the conventional rotor, will be used for vertical takeoffs and landings. In forward flight, the rotor will be folded and stowed, and the propeller will take over. The "composite helicopter" will also have a short wing.

The first step in that development—a rigid-rotor helicopter—has already been taken by Lockheed, now building this type of craft for the U.S. Army.

PROMISE FOR FUTURE

When the evolution is finished—around 1980—the composite plane is expected to have far more speed and capacity than today's helicopters.

Looking still further ahead, the Canadian expert predicts that by the year 2000 "all airline airplanes, subsonic and supersonic, will be wingless, wheelless, lifting-body vehicles" powered by a combination of "horizontal-thrust and lift-thrust engines." He also believes a nuclear plane could be built within 10 years and evolve by 1990 into a million-pound craft carrying 1,000 passengers. Shielding for a nuclear engine, Mr. Dyment says, will weigh less than the fuel for one of the jumbo jets.

Increasing size is expected to be accompanied by decreasing costs per passenger mile—hence probably lower fares.

Some airline executives have suggested reductions of as much as 50 per cent in long-distance fares when the jumbo jets are in widespread use.

With all these advances, however, some problems will remain. Mr. Dyment warned the industry about these:

Speeds much above 1,800 miles per hour—the speed set for the U.S. version of the SST—are not likely in this century. The technical problem in changing from 1,800 to 6,000 miles per hour is much greater than the problem of changing from 600 to 1,800.

The sonic boom, which occurs when a plane flies faster than sound, will remain. The pressures the public will accept are likely to be "considerably lower than the value the manufacturers believe will be acceptable."

Smoke from airliner exhausts will be a continuing worry. Some aircraft engines smoke more than others, and the pressure will be on manufacturers to improve the "smokers." There will also be research on additives that can reduce or eliminate smoke without adding to fuel costs.

Mr. Dyment sees no solution at hand for the problem of "clear-air turbulence"—vertical air currents in a completely clear sky that can send an airliner plunging thousands of feet without warning. No "all-capable black box" is being developed that can give advance warning of that kind of situation.

For flying at extremely high altitudes, earlier warnings of increased cosmic-ray activity will be needed.

New methods of handling passengers and baggage at the airports, and better ground transportation to and from airports, need to be developed.

NOISE ABATEMENT

Mr. Dyment predicts that the noise around airports will become less intense but more constant.

Another airline authority, A. Baltensweiler of Swissair, says he is worried about the "sideline noise" of the SST during takeoff. The noise this plane will emit underneath the takeoff path will be "quite acceptable to today's standards," Mr. Baltensweiler says, "but populated areas abreast of the runway will be flooded with noise" exceeding that from today's largest planes "by a very, very wide margin."

All in all, as the experts see it, air travel in the future should be exciting and rewarding, even if effects on the ground leave something to be desired.

EARMARKING OF CERTAIN REVENUES FOR THE LAND AND WATER CONSERVATION FUND

Mr. JACKSON. Mr. President, the Washington Post on Sunday, April 28, published an excellent editorial on S. 1401, the bill to amend the Land and Water Conservation Fund Act, which the Senate passed on Tuesday. The Post editorial so clearly summarizes the situation, and so cogently puts the issues involved in the legislation into proper perspective, that I ask unanimous consent to have the text printed at this point in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

SHOWDOWN ON PARK FUNDS

For several days the Senate has debated the bill to supplement the Land and Water Conservation Fund and to speed the acquisition of national and state park lands. Senator Jackson described it as "emergency legislation to save and maintain the outdoor recreation programs of the states and of the Federal Government." Senator Kuchel said it is the most important conservation measure that will come before Congress this year. It was unanimously endorsed by the Senate Interior Committee. Yet some Senators are attempting to destroy it by amendments.

The chief purposes of the bill are to make possible the acquisition of park lands before they are despoiled or committed to other purposes and to counteract escalating land prices. It is not uncommon for Congress to authorize a national park estimated to cost $14 million, as in the case of Point Reyes National Seashore, and then find when it gets around to buying the land a few years later that the ultimate price tag will be $55 million. The National Park Service must have new tools to deal with this problem.

Several such tools are provided in the Senate bill. One would be authority to acquire options on lands and waters in any area approved by Congress for park purposes, without waiting for specific appropriations. Another would permit contracts to purchase such lands in advance of appropriations up to $30 million a year. A third would permit lease-back and sell-back arrangements for land not immediately needed for recreational purposes, a device which the Interior Department estimates may return to the Government from 40 to 100 per cent of the initial acquisition costs.

Even more important is a reliable source of funds that will permit advance planning for the acquisition of park sites. For this purpose the bill would earmark $1.2 billion from the receipts of Outer Continental Shelf mineral leases over the next five years for the Land and Water Conservation Fund. Originally the bill would have channeled into this fund all the Outer Shelf receipts and other mineral-easing and national forest revenues on the ground that funds flowing into the Treasury from the sae of natural resources should be reinvested in recreational lands for the benefit of all the people.

Under pressure from the Budget Bureau this was scaled down to a small fraction of the natural-resource revenue. What remains for the Conservation Fund is an irreducible minimum if a reasonable park-acquisition program is to be carried out. Approval of this bill, without crippling amendments, would ease the problem of acquiring a Redwood National Park, the proposed Potomac National River Park and many similar projects at reasonable prices. In the long run it may well save the Government billions of dollars through the taking of land at pre-escalation prices. The Senate should not let this opportunity go down the drain for want of vision as to the Nation's future recreational needs.

Mr. JACKSON. Mr. President, I regret that a majority of the Senators present and voting on Monday did not agree with the Committee on Interior and Insular Affairs that the best economy in the long run would be the earmarking of certain revenues for the land and water conservation fund to assure that the States and Federal agencies could acquire authorized park areas before the land prices escalate even more. All of the money which would have been earmarked would still have to be appropriated by Congress through the regular procedure. I hope the Senate will have another opportunity to examine this question before the end of the 90th Congress.

The bill retains many valuable land management tools and, in my judgment, even without the earmarking feature, it is good legislation.

POLISH CONSTITUTION DAY

Mr. PERCY. Mr. President on the 3d of May, as we commemorate Polish Constitution Day, let all free men rededicate themselves to the cause of liberty and to the cause of justice. Let us remember those who are denied liberty and justice, and let us speak up for those ideals and pledge that our concern will endure until one day all men are free.

URGENT ACTION NEEDED ON TAX INCREASE

Mr. SMATHERS. Mr. President, the storm signals are up for the U.S. economy and are waving more frantically than ever. Everybody agrees that time is running out.

Congressional inaction on the long-delayed surtax and spending reductions may have already done much damge.

Here are some startling facts concerning the economy as seen by our leading experts both in and out of government:

The domestic economy is racing ahead at a dangerous pace. The first quarter increase in total production set a record of $20 billion, the largest quarter-to-quarter gain in history. There is evidence that the current quarter gain will equal if not exceed this figure. This, coupled with resurgent consumer spending, is putting an excessive strain on resources, which can result in grave consequences.

The dollar is still shaky, and international confidence in it is still lacking. We must take action which will exhibit our willingness and ability to meet our fiscal responsibilities at home if confidence in the dollar is to be restored abroad.

Wages, both union and nonunion, are increasing too fast. Much of the first quarter increase in personal income can be attributed to a rise in the statutory minimum wage and increased social security benefits, but increased industrial activity in the second quarter will likely result in more overtime, more jobs, higher wages, and larger personal incomes. Consumers have also reduced the percentage of aftertax income that they save, from 7.5 percent last year to 6.8 percent this year, thus pouring still more money into an already flooded economy.

The cost of living continues to rise, with the March index posting the sharpest increase in 8 months. The March rise of 0.4 percent over February is the 14th consecutive monthly advance in living costs. This consumer price rise largely affects our balance of trade as Western European countries trim their cost-of-living trend back to standards of a few years ago.

Mr. President, the red flags are there. If we do not have fiscal balance, if we do not have congressional action on the tax bill, we will be faced not with a boom but with a bust. The time has come for Congress to act, to break the deadlock and accept the tax and spending cut package which will restore fiscal responsibility and divert an impending financial crisis.

Mr. President, I ask unanimous consent to have printed in the RECORD several articles published in the Wall Street Journal of April 29 and two articles published in the Washington Post.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, Apr. 29, 1968]

BUSINESS INDICATORS POINT TO MORE INFLATION—CASE FOR FISCAL RESTRAINT IS TERMED STRONGER

(By Richard F. Janssen)

WASHINGTON.—The Johnson Administration's bargaining in Congress for a tax increase will resume tomorrow against a backdrop of intensifying economic strains and a bulging budget deficit.

Whether the increasingly ominous indicators will prove enough to break the stalemate over spending cuts as a price for boosting taxes remains uncertain, but Administration insiders figure the developments of the past few days have made the economic case for fiscal restraint more compelling than ever.

"We've been saying since last fall that there's a chamber of horrors around the corner," one official recalls, and he cites evidence that the corner is currently being turned.

In addition to the accelerating climb in consumer prices and the disturbing deficit in foreign trade that became apparent late last week, the Government reported today that the "leading indicators" of business point toward stronger inflationary pressures just ahead. What's more, the Government's own deficit on the new unified budget basis has run up to $28 billion through the first nine months of the fiscal year, ending June 30, and even the seasonal influx of tax collections isn't expected to work it back down to the $19.8 billion total estimated only last January.

Of the 21 leading indicators available for March, the Commerce Department said, 16 pointed up and only five were dropping or holding steady. When a similar number for February was published last month, only nine tilted up and 12 were moving down or sideways. As these statistics that are considered guides to overall activity a few months hence generally have been heading higher for about a year, they suggest that "we're likely to have a continuing strong rise in the economy well through 1968," commented William H. Chartener, assistant commerce secretary for economic affairs.

While cautioning that officials "don't particularly like the scorecard approach" to interpreting the indicators, Mr. Chartener emphasized at a news conference that an "overwhelming preponderance" of all economic statistics available for March showed advances. These figures, most of which previously have been published separately, also include those considered to move along with or behind the economy generally.

"ANOTHER LARGE RISE" SEEN IN GNP

After a record advance in the first quarter, Mr. Chartener said, the gross national product is expected to show "another large rise" in the current quarter. This most comprehensive measure of both private and Government output of goods and services was reported as climbing by $20 billion in the March quarter to a $827.3 billion seasonally adjusted annual rate. As the foreign trade surplus component fell short of what was assumed, however, some analysts suspect the GNP rate for the first quarter might have to be pared back by perhaps $1 billion.

Aside from the sometimes-dubious signals flashed by the leading-indicator compilation, Mr. Chartener cited these reasons to expect further rapid overall growth: "Sales were to strong to permit the rise in inventories" that businessmen generally wanted to achieve in the first quarter, so that their effort will continue to spur heavy production; consumers have reduced the share of after-tax income that they save to 6.8% from the exceptionally large 7.5% of late last year, and the June quarter will be the first one fully reflecting added income from minimum-wage-law increases and liberalized Social Security benefits.

President Johnson's previously reported announcement that Vietnam expenses are rising, Mr. Chartener added, bodes a rise of roughly $2.5 billion this quarter in the defense-spending sector of the GNP, which rose by $2 4 billion to a $74.6 billion annual rate in the first quarter.

Even passage of the long-sought 10% income-tax surcharge, on a comparable change in tax rates, would no longer do much to narrow the current fiscal year's Federal deficit, other officials said in interviews. If taxes were raised in the next few weeks, they probably wouldn't pull more than $1.5 billion to $2 billion extra into the Treasury before the fiscal year expires June 30, they said.

That could hold the deficit to around $22 billion, less than the approximately $24 billion expected without such action, but still more than double the $8.8 billion of the last fiscal year and easily exceeding the deficit in any of the 10 years for which the budget has been reconstructed to mesh with the new unified approach; this approach includes the massive trust funds through which Social Security and certain other payments and recepits are channeled, as well as the outlays previously included in the narrower and now-abandoned administrative budget.

Promising to keep the deficit from becoming even deeper, an analyst said, is the fact that receipts from individual taxpayers near the April 15 income-tax deadline have been "running somewhat better than anticipated," giving as much as $400 million to $500 million extra help. Reports of fattening corporate profits in the first quarter, he added, suggest that the Treasury's intake from this source might be about $500 million bigger than expected, too.

While the Treasury isn't in a "fat" cash position, "life could be worse," a debt expert said, and at the moment it appears the de-

partment will have little or no new borrowing to do to cover the current fiscal year's deficit. Through the end of March, the new budget figures show, the Treasury and other agencies borrowed $25.7 billion from the public, with the remainder of the deficit to that date covered by drawing down cash balances and miscellaneous financial transactions.

The national debt outstanding is sure to rise in coming months, analysts add, but they expect the trust funds to amass enough of a surplus before June 30 so that as much as $4.5 billion of Government securities will be acquired by Government agencies themselves. Through this means and the maturing of some $5.5 billion of tax-anticipation bills in late June, they explain, the cumulative amount of borrowing from the public should be less by the end of the fiscal year than it was at the end of March.

REFINANCING OF ISSUES

Officials don't rule out the possibility, though, that they might try to attract some extra cash in connection with the refinancing of $8 billion of longer-term issues that come due May 15. With about $3.9 billion of these held by private investors (and the rest in Government accounts) they would have the opportunity to raise perhaps $400 million of new cash by the frequently used device of accepting subscriptions for about 10% more in new issues than needed merely to replace the old ones.

Plans for this financing won't be nailed down until the last minute, of course, but some sources speculate that a logical offer would consist of one security of about seven years maturity and another much shorter one, of perhaps 15 months.

The Treasury also could decide to get a head start on the next fiscal year's borrowing sometime closer to June 30, because the Administration's financial fears currently center mainly on the coming summer and fall. Unless a tax increase starts bringing in extra revenue at about the $10 billion annual rate sought, Mr. Chartener warned, the Government will face a "severe financial problem" in the second half of this calendar year.

[From the Wall Street Journal, Apr. 29, 1968]

THE OUTLOOK: APPRAISAL OF CURRENT TRENDS IN BUSINESS AND FINANCE

For much of 1967, many economists went around with brows furrowed about the viability of the long boom. Despite smartly rising incomes, consumers seemed sated with shiny new cars, cool to color TV, and strangely fascinated by fattening balances in their savings accounts. Businesses were periodically paring back their capital spending plans, and only the Vietnam war seemd to be keeping the economy from becoming stuck on a plateau.

But so far in 1968, the eternal American dream of an ever-larger helping of worldly goods and services is reasserting itself—and with an impatient intensity that could imperil its realization.

In the pervasive "sky's the limit" mood, unions ask for and receive pay hikes in percentages that would have been dismissed as daydreams a few years ago. Companies rapidly post price increases with little evident worry that their clamoring customers will be driven off. Shoppers plunge bravely into deeper instalment debt again. And an even more reckless impatience to consume was evident in Washington and other places lately, when Negro youths happily smashed the plate glass windows that seemed the only barrier to at least a briefly more abundant life.

Some statistics, too, convey a sense of limitless potential. The Federal Reserve Board's index of industrial output is setting records again, and related figures suggest there's plenty of room left to grow. Despite the robust boom of the first quarter, factories averaged 15.9% idle capacity, a margin of slack that hasn't been exceeded in five years and is 3 percentage points wider than in the generally sluggish like quarter of last year.

The broadest measure of the economy—the gross national product—also radiates unrestrained expansion. Not only was the annual rate of GNP in the March quarter the biggest on record, but the gain over the previous quarter was the most sizable ever achieved.

A less cheerful set of satistics shows, however, that the giant gains are being achieved at a considerable price—an inflation that just might prove serious enough to undo the boom. The first column below lists the percentage gains in real GNP, or physical output of goods and services exclusive of inflation; the second shows the accompanying rise in prices of all elements in the GNP. The 1968 figures represent annual rates in the first quarter.

Year	Percent real GNP gain	Percent price inflation
1964	5.5	1.5
1965	6.1	1.9
1966	5.8	2.7
1967	2.6	3.0
1968	6.0	4.0

Obviously, the intensifying inflation hasn't yet crimped real output. But unless North Americans become as acclimated to ever-soaring prices as South Americans have, what most deeply worries Johnson Administration economists is that when the reaction does come it is apt to be over-reaction. "People enjoy inflation for a while, but then they tend to become cross about it," says one, "and you get really strong pressure to put some limits on it."

To a degree, some influential Administration men fret, that's what's happening already in Congress. Lawmakers aren't content to impose the restraint of a $10 billion tax increase without also crossly cutting some $6 billion of spending stimulus from the budget. What with the Federal Reserve Board's aggressively tighter monetary policy and a new White House determination to keep Vietnam outlays from soaring, "we just don't need all that much restraint," says an Administration aide. The drag that Congress would put on the economy with the tax and budget package wouldn't be heavy enough to cause a recession, he assures, but he argues that it would needlessly exceed the bounds of prudence.

Lack of either tax hikes or spending cuts would be a completely different story, however, increasing the chances of an all-the-harsher attack on inflation within another year or two. Embattled England almost invariably pops up as the object lesson. While the circumstances vary, it's not hard to see how delays in dealing with chronic economic ills can compel a country eventually to resort to an abominable array of direct controls, confiscatory taxes and incredible interest rates all intended to deliberately shrivel the standard of living.

Long before any such painful economic backlash takes place, though, the growth in real output is apt to become less impressive than it's been lately. The limiting factor: Not plant capacity, but people.

The phrase "shortage of skilled help is heard so often that its almost a cliche, and the less skilled can be hard to find, too. One shred of evidence appeared in a crowded Columbus, Ohio, restaurant on a recent Saturday evening, when it became apparent to patrons that the lone and aging waitress assigned to their section couldnt cope both with serving current customers and with clearing away several hours accumulation of dirty dishes. The bottleneck was broken only when a boothful of teenagers took over, voluntarily doing busboy duty and operating soft drink spigots.

So far, to be sure, the supply of new workers has proven surprisingly large. While officials had expected at least 1.4 million to join the civilian work force this year, they weren't prepared to find 735,000 newcomers employed in February and March alone. That could mean the reservoir of women and teenagers wanting to latch onto increasingly attractive payrolls is even deeper than believed. But it could also mean that the lion's share of all the new workers that will emerge this year has already been spoken for, and that relatively few are left.

"In a wartime kind of economy, it's amazing how much you can squeeze out of the turnip," marvels a high official. But it wouldn't be amazing if our drive for extra consumption becomes frustrated someday by limits either on our human resources or on our patience wtih inflation.

RICHARD F. JANSSEN.

[From the Wall Street Journal, Apr. 29, 1968]

TAX BOOST, SPENDING CUTS PACKAGE SEEN IMPERILED BY SPLIT BETWEEN TWO HOUSE PANELS

(By Norman C. Miller)

WASHINGTON.—A split between two powerful House committees is endangering urgent efforts to reach agreement on an income-tax increase and a spending-reduction package.

The Johnson Administration is trying to develop a compromise on the key issue of how much spending should be cut. But President Johnson's reluctance to openly advocate a spending-cut scheme of his own makes it uncertain whether the compromise effort will succeed.

A breakthrough could come quickly, to be sure, for the factors handicapping the compromise effort are balanced against a widespread Congressional feeling that "something must be done soon" to avoid a financial crisis. Yet intensive private discussions, involving Administration officials and key members of the House Appropriations and Ways and Means committees, have failed to produce agreement on a spending-reduction plan that all believe is a prerequisite to finally getting a tax bill moving in the house.

A House-Senate conference committee is slated to resume discussion of the tax and spending-cut issue tomorrow. But House negotiators have declared unacceptable a Senate-passed plan that would couple a 10% income-tax surcharge with a spending limit designed to cut $6 billion from the Administration's budget for the year beginning July 1.

HOPE FOR TALKS FADE

It had been hoped that the conferees would be able to start informal discussions of a new House plan for long-term spending control, but that seems like a faint hope now. A House plan would have to originate in its Appropriations Committee, and it is evident that that panel's Chairman Mahon (D., Texas) and Ways and Means Committee Chairman Mills (D., Ark.) disagree sharply on the spending-cut issue. The problem of closing the breach between them is compounded because several Appropriations subcommittee chairmen, who have power in their own right, are balking resentfully at Mr. Mills' demand that they move to rescind and reduce appropriations before his committee acts on an income-tax measure.

After a special Appropriations Committee meeting Friday, Mr. Mahon said in an interview that "no plan of action" had been developed during the closed-door session. He said the appropriations reductions Mr. Mills has urged were "too high."

ADMINISTRATION'S PROPOSAL

For his part, Mr. Mills has stressed he won't consider supporting a tax bill unless action is taken to rescind unspent appropriations that Congress approved in previous years, as well as reducing Administration requests for new spending authority. In private negotiations, Mr. Mills is demanding a

$20 billion reduction in requested and previously authorized appropriations, coupled with a spending limit designed to cut $6 billion from next fiscal year's budget. Appropriations may be spent over more than one year, and Mr. Mills believes the plan would result in long-term expenditure control.

The Administration has been unwilling to accept such deep cuts. Privately, it has offered to accept $16 billion of cuts in requested and previous authorized appropriations and a $4 billion reduction in its spending plan for next fiscal year, according to one high official.

Mr. Mahon apparently is leaning toward supporting the smaller reductions the Administration indicates it will accept. But he is having trouble persuading his committee to support that plan. Several influential Appropriations Committee members insist that President Johnson must publicly endorse a specific budget-cut plan before they will undertake the politically onerous task of rescinding and reducing appropriations.

But so far, President Johnson has declined to make a public recommendation, maintaining instead that he would accept whatever cuts Congress proposes. Some discouraged participants in the negotiations fear the whole effort may collapse unless the President moves soon to break the deadlock. "The committees aren't going to get anywhere on their own," one Administration official says.

No one has been able to come up with a compromise solution, and the Administration is reluctant to throw its support to either side. "The President is in a bind," says another official. "If he takes the package Mills wants, he risks losing the Democrats. If he gets out in front with his (lower spending-reduction) plan, he risks losing Mills and the House Republicans."

SERIOUS FINANCIAL SITUATION

Some key Congressmen express confidence that these problems will be solved somehow and that a package including a tax increase and spending reductions will be enacted before long. By their assessment, the principals in the struggle agree on at least one thing: The Government's financial situation is too serious to let disagreement over details prevent decisive action to curb the burgeoning budget deficit.

Some think action could come rapidly. "The ingredients of compromise have been present for weeks," said a senior Ways and Means Democrat. "There hasn't been any movement yet, but I really think a breakthrough could come by the middle of (this) week."

Others who expect a compromise think it may take longer to arrange. But they agree that time may be running out, that a lengthy delay risks development of a financial crisis before action is taken.

"We have got to stop this talk, talk talk," said a disgusted House Appropriations Committee Republican. "We need a plan of action to do something within 30 days."

[From the Wall Street Journal, Apr. 29, 1968]

IRS SUGGESTS NO HALT IN EXCISE TAX COLLECTIONS

WASHINGTON.—The Internal Revenue Service "suggested" that car makers and telephone companies continue to collect excise taxes after tomorrow, even if Congress doesn't pass the bill extending current charges by then.

The 10% telephone tax and 7% auto tax are due to drop on May 1 to 1% and 2% respectively. The excise tax bill, weighted down with controversial amendments, including the Administration's long-sought 10% surtax, is currently tied up in a Senate-House conference committee.

But it's generally assumed that the excise tax portion, which provides for continuation of the taxes at current rates until Jan. 1, 1970, will be passed separately. The IRS theorizes, though, that if the bill's passage is delayed beyond the tax cutback date, its provisions will be retroactive and car makers and telephone companies might have a harder time collecting the back taxes.

The IRS made a similar suggestion last month, when the taxes lapsed for a few days before a temporary stop-gap measure was enacted retroactively, restoring them until May 1.

[From the Wall Street Journal, Apr. 29, 1968]

LIVING COSTS POST SHARPEST CLIMB IN 8 MONTHS—MARCH INDEX INCREASED 0.4 PERCENT FROM FEBRUARY—GAIN WAS THE 14TH IN SUCCESSION—WHOLESALE-PRICE RISE IS SLOWED

WASHINGTON.—Consumer prices in March staged their swiftest rise in eight months, but the climb in wholesale prices slackened, the Labor Department reported.

Increases in most consumer goods and services pushed the consumer price index to a record 119.5% of the 1957–59 average, up 0.4% from February's 119% and 3.9% above the 115% of a year earlier. The March rise followed five consecutive monthly increases of 0.3%, and was the 14th consecutive monthly advance in the cost-of-living measure (see chart on page one).

"It's safe to assume" that the index will rise again this month, but "it's hard to tell now" by how much, said Arnold Chase, assistant commissioner of the Bureau of Labor Statistics. If the present rate of increase continues, the climb in living costs this year could exceed the 4% of the Korean war year of 1951, he said.

He indicated that the "fast increase in industrial prices" is likely to resume in the second half of 1968, but he quickly played down any chance that this could lead to price controls.

FOOD COSTS BIG FACTOR

Food, apparel and furniture prices led last month's increases, the department said in its report.

Retail and wholesale food and beverage prices rose a seasonally adjusted 0.4% from February. Higher pork, poultry and fresh-fruit prices caused most of the retail advance, the department said. Vegetables prices slumped as improved weather boosted production, and egg prices declined less than seasonally.

The overall consumer price index isn't adjusted for seasonal variation, but some components are modified to make trends easier to detect.

Retail apparel prices last month rose a seasonally adjusted 0.7% from February, reflecting strong demand for new spring and summer lines of women's and girls' wear. Wholesale apparel prices climbed 0.4%, as wages and material costs rose, the department said. A "slight rise" in retail and wholesale durable-goods prices resulted largely from "strong advances" for furniture and floor coverings. Retail prices of new autos dropped seasonally, but remained 3.5% above a year earlier.

SERVICES MORE EXPENSIVE

A 0.6% rise in the cost of consumer services last month accounted for almost half of the index's advance from February. Included were recent advances in college-tuition charges and higher medical costs, reflecting increased hospital charges and doctors' and dentists' fees. Higher home-ownership costs resulted from advancing property taxes and insurance rates. Rents rose 0.3%.

Wholesale prices rose 0.2% last month to 108.2% of the 1957–59 average, after having risen by 0.7% in February. The March level was 2.4% above a year earlier. The report estimated that such prices this month climbed another 0.2%.

Prices of industrial commodities last month rose 0.3%, down from February's 0.5% rise, and farm-product prices were up for the fourth consecutive month, the department said. Led by higher metals, lumber, chemicals and machinery quotes, 110 of the 225 industrial-product classes listed by the bureau registered price boosts.

Industrial commodities this month were estimated to have risen by 0.2% to 108.8%; this would be 2.6% above April 1967. These prices, which analysis consider of key importance to the stability of the domestic economy and the U.S. ability to export successfully, have been rising since last August, after holding fairly stable from February 1967 through last July.

NOTES TRADE DEFICIT

Referring to the dismal U.S. trade performance last month, Mr. Chase said: "We can ill afford" price boosts in export products or in products that compete with imports. U.S. foreign trade in March showed a deficit of $157.7 million, the first time imports exceeded exports in more than five years.

The accelerating consumer-price rise plays "a very large part" in the deteriorating trade picture, a high Commerce Department official said separately. William H. Chartener, assistant secretary for economic affairs, said that while the U.S. index is rising at about a 4% annual rate lately, compared with 1.2% a few years ago (with a 4.8% annual rate in March alone), major nations in Western Europe have cut their living-cost trend back from the 4% that prevailed a few years ago to around 2.6% in the last year.

The dollar outflow is being worsened substantially at the consumer level, he said, by sharply rising U.S. used-car prices and an accompanying jump in demand for foreign cars, to nearly a 1 million-unit annual rate in the first quarter from about 750,000 a year earlier. Voicing a view officials generally have dared express only in private, Mr. Chartener said: "We may be reaching the point where American manfacturers (of autos) will have to take a much closer look" at the possibility of regaining the small-car market for the sake of curbing the dollar and gold drain.

METAL PRICES FALLING

The department noted that in April metal prices dropped sharply. Copper prices declined following settlement of the eight-month industry strike, and prices for iron and steel scrap plunged 7.5% as steel mills trimmed their raw-materials inventories in anticipation of reduced customer buying after the Aug. 1 steel-strike deadline.

The March rise in the consumer price index will bring cost-of-living pay boosts to about 80,000 workers, the department said. The advance in the index since December will bring an additional 3 cents an hour to about 65,000 aerospace and public-transportation workers. Increases of 1 to 5 cents an hour will go to other workers based on monthly, quarterly and semiannual changes in the national indexes.

Separately, the department reported that workers' weekly purchasing power fell 6 cents in March. In terms of 1957–59 dollars, to adjust for price increases, the average nonfarm, nonsupervisory worker with three dependents had "real" buying power last month of $77.77 a week, down from $77.83 in February but up from $77.43 a year earlier.

[From the Washington Post, Apr. 26, 1968]

UNITED STATES MARKS RARE DEFICIT IN TRADE

(By Frank C. Porter)

The Government's drive to reduce the dollar drain received a setback yesterday when Commerce Department figures disclosed the first monthly U.S. trade deficit in five years.

The United States bought $158 million more from foreign sources last month than it sold overseas a projected annual trade deficit of nearly $1.9 billion.

The Johnson Administration has been shooting for a 1968 surplus—the excess of exports over imports—of $4.6 billion. This

would compare with last year's anemic favorable balance of $3.6 billion.

Adding to the gloom were Treasury figures reported by the Associated Press yesterday showing that the Nation lost $1.2 billion more of its gold in March, reducing the stockpile to $10.7 billion. This is about half the bullion that was on hand 10 years ago.

Most of this loss, however, apparently occurred before March 17 when the United States and other gold pool members initiated a two-price system, confining their transactions to central banks and no longer supplying the private market. Thus U.S. authorities are hopeful that any further drain on their gold stock will be minimal.

The Commerce Department reported that general imports rose 0.4 per cent in March to $2,612,400,000—second only to the record set in January.

Exports, on the other hand, nosedived 11.5 per cent to $2,454,700,000—the lowest since last October.

Government officials blamed the rare deficit partly on an 11-day longshoremen's strike in New York, although the official Commerce Department announcement said the effects of the dock tieup on either imports or exports could not be assessed. Presumably such a work stoppage would cut imports as much as exports.

It was noted, however, that the last trade deficit—$101 million in January, 1963—also occurred during a dock strike.

More worrisome is the fact that the Nation's trade surplus has been gradually narrowing over the past two years. And the March performance could be blamed in good part on three product areas: steel, copper and autos.

American consumers have been stockpiling foreign steel at an accelerated rate as a hedge against a possible strike in the domestic industry this fall.

The American Iron and Steel Institute reported that steel imports set a record in March. For the first quarter, it said, net imports were a record 3.4 million tons, up 40 per cent over the same period last year and more than 12 per cent of domestic consumption.

Copper imports have been running about $100 million monthly because of the eight-month strike in the domestic industry. Although a settlement was reached last month, it will take time for domestic supplies to catch up to demand.

Auto imports have been running at a record rate somewhere around 10 per cent—as the American industry continues to leave the market wide open for cheaper and smaller foreign cars.

Although the country normally has a trade surplus, other factors—tourist spending and military expenses overseas, foreign aid, investment abroad and the like—more than offset it, making the United States chronically fall short in its balance of payments. In other words, more dollars flow out of the Nation than come back to its shores.

Despite the March trade deficit, there is a net export surplus for the first three months of 1968 amounting to an annual rate of $731 million. But this is a far cry from the Administration target of $4.6 billion.

[From the Washington Post, April 29, 1968]

SECOND QUARTER GAIN IN GNP MAY APPROACH RECORD

(By Harold B. Dorsey)

NEW YORK.—Although the increase in Gross National Product in the first three months of the year was the largest quarter-to-quarter gain on record—$20 billion and an upward trend at an unusually large 10 per cent pace on an annual rate basis—the prospects suggest that the second quarter increase will also be in the neighborhood of $20 billion.

In fact, the economy is likely to take on a boomier appearance in the current quarter than it did in the January-March period. The first quarter jump in GNP would have been even larger if it had not been for the fact that the rate of inventory accumulation declined from $9.2 billion in the fourth quarter to $3.9 billion in the first. Inventory accumulation is expected to accelerate in the second quarter and this factor alone will provide considerable stimulation to business activity.

Factory output, as reflected by the Federal Reserve industrial production index, actually declined slightly in January and February after hitting a peak of 164.0 in December, and has shown only a partial recovery to 163.5 in March. This softness in the manufacturing sector, however, largely reflected temporary factors.

Factory output in the April-June period should show a fairly substantial rise. Detroit has boosted its assembly schedules for April and further additions may be forthcoming in May and June. Steel output, already running at a record rate, should continue to rise as metal users add to their strike-hedge inventories. The resumption in the output of copper will help swell the overall production figures.

The pickup in consumer spending should add further to industrial activity. Inventory ratios in distribution channels are now relatively low. Manufacturers, therefore, are again in a position to boost production rates for consumer goods.

Since much of the big increase in personal income in the first quarter was attributable to boosts in the statutory minimum wage and in Social Security benefits—which in turn provided the wherewithal for the consumer spending spurt—it is widely assumed that incomes will show a much smaller rise in the current quarter. However, I believe that the second quarter gain in personal income will not be far short of that recorded in the first quarter. Rising industrial activity should result in more employment, longer working hours and more overtime, thus entailing bigger paychecks. As a result consumers are likely to have ample purchasing power to continue their spending spree during the April-June period.

Beyond that point, however, the prospects are considerably less favorable. In the first place, because GNP is rising at the annual rate of 10 per cent in the first half of the year (6 percent after disallowing the effects of higher prices), the growth in the economy's resources simply will not permit a continuation of that excessive pace. For one thing we don't have the necessary labor force.

In addition, that rate of growth in the economy's activity is certain to increase the demand for credit at a time when the monetary authorities are committed to restrain the growth in the supply of credit. If we are to assume that the Federal Government deficit will not be reduced significantly, then the government's demand for credit is going to be enormous.

An inadequate supply of credit in relation to demand almost invariably has a negative effect on the spending of the non-government sectors, usually after a six-to-nine month time lag. Again assuming that Congress will not enact the legislation necessary to reduce the deficit, the crisis atmosphere in the area of international payments and gold seems certain to recur with an adverse effect on confidence here and abroad.

Congressional dallying with fiscal policy legislation has already done a lot of damage. It has permitted an inflationary boom to get under way and that maladjustment has to be corrected later on. It has already caused the monetary authorities to lay the base for severe tension in credit markets. It has caused one gold crisis and something near chaos in the international monetary area is impending unless proper fiscal action is taken very, very soon.

REGIONAL SOIL CONSERVATION PROJECTS

Mr. JAVITS. Mr. President, I am always pleased to learn of positive efforts in Federal-State-local cooperation. I invite attention to the impressive cooperative effort between New York State and the Federal Government in developing regional resource development boards to bring various agencies together to study the very important problem of soil and water conservation. In particular, I am speaking of the New York State river basin studies which may prove to be the catalyst for construction of reservoirs for flood control, municipal water supply, pollution control, irrigation, and recreation, as well as for the identification of areas best suited for agriculture, highways, and parks.

I am particularly concerned with the need to minimize water pollution problems in smaller rivers and streams during periods of drought as well as the need for construction of reserve water facilities in rural areas in anticipation of future industrial and community growth needs. Together with 10 New York Members of Congress, I have introduced a bill, S. 2308, to deal with these two problems in particular.

I am hopeful that the proposed legislation will be enacted so that additional Federal assistance will be available to New York State and other States to implement plans such as that which may be submitted by the Western New York State River Basin Study.

I ask unanimous consent that an article entitled "New York Plan for Water," written by the assistant commissioner of the New York State Conservation Department, Francis W. Montanari, and Wallace L. Anderson, the State conservationist, and published in the Department of Agriculture publication "Soil Conservation," be printed in the RECORD. The article discusses in some detail the splendid efforts being made in New York.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

NEW YORK PLANS FOR WATER: REGIONAL RESOURCE DEVELOPMENT BOARDS BRING AGENCIES TOGETHER IN STUDIES OF RIVER BASINS

(By Francis W. Montanari and Wallace L. Anderson)

New Yorkers, pressed by the drought years of 1962–66, are taking a searching look at their river basins and organizing forces to plan the development of their extensive water resources.

In 1959, the Temporary State Commission on Water Resources Planning reported, "The most productive approach to the State's water-resource problems can be accomplished through State-Federal cooperation. . . ." Now, Federal and State agencies are cooperating on river basin studies covering almost the entire State.

The State Water Resources Commission represents State interests by including members from State Departments of Conservation, Transportation, Agriculture and Markets, Health, Commerce, Law, and the Office for Local Government. The Division of Water Resources is the commission's technical service arm in river basin studies.

The U.S. Department of Agriculture participates in river basin studies through the Soil Conservation Service with the cooperation of the Economic Research Service, Forest Service, and other agencies as appropriate.

STUDIES IN PROGRESS

Two studies, one on the Genesee River Basin and one on the Susquehanna River Basin, will result in recommendations for the construction of water-resource projects. Also underway are a North Atlantic Regional Study and an Ohio River Basin Study, which will result in framework plans for these two streams.

A Western New York River Basins Study, now in the beginning stage, will identify specific projects in its recommendations. Under a cooperative agreement with the Soil Conservation Service, the New York State Division of Water Resources will reimburse SCS $44,000 in order to accelerate the studies to meet schedules for a completed comprehensive water-resource plan established by the division. The money will be used to make upstream reservoir site inventories and cost estimates and to do field surveys of flood and drainage problems.

Other studies are being conducted jointly by interstate or Federal-State commissions or committees in the Delaware River Basin, the Great Lakes Basin, the New England River Basins, and as part of the Appalachian Regional Development Program.

ROLE OF CONSERVATION DISTRICTS

The State recognizes the importance of soil and water conservation districts as a means of including local people in resource planning. In turn, the districts encourage county governments to request the State Water Resources Commission to form regional water-resources planning and development boards. Six such boards, representing 24 of the 62 counties in the State, have been organized since 1960.

A regional water-resources planning and development board formulates a comprehensive plan which identifies projects economically justified for development and outlines possible means of financing and managing them. The board uses basin studies as a guide for applying plans suggested by the U.S. Army Corps of Engineers and the U.S. Department of Agriculture.

The Board's personnel and its legal, engineering, and other services come from the commission, through the Division of Water Resources of the State Conservation Department. The counties involved pay 25 percent of the cost of the study, and the State pays the balance.

A VARIETY OF INTERESTS

Five of the seven board members represent a specific interest, such as agriculture, industry, public water supply municipal corporations, and outdoor recreation, and two are members-at-large.

For example, on the Erie-Niagara Basin Board in western New York, agriculture is represented by Wendell Call, a town supervisor and vice-chairman of the Genesee County Soil and Water Conservation District, Many dedicated men, like Mr. Call, are investing much time and energy toward insuring wise use of the State's water resources.

Soil and water conservation districts and regional water-resource planning and development boards complement each other. Districts give information and support to the boards and help insure the proper consideration of agricultural interests in the final plans. As an example, seven districts in the South Central Resource Conservation and Development Project recently helped supply the petition for establishing the Eastern Susquehanna Regional Planning Board. This board is now established.

Local governments and State and Federal agencies are anxious to convert these plans to action. The result will be construction of reservoirs for flood control, municipal water supply, pollution control, irrigation, and recreation; the identification of areas best suited for agriculture, highways, and parks; the enlargement or stabilization of channels for flood control, navigation, drainage, or sediment reduction; and the proper use and management of land to reduce erosion and floods and to insure proper use of land resources. The plan also will point out the needs for new State and possibly Federal legislation for action programs.

Although anxious for action programs to begin, New Yorkers are convinced that adequate and proper planning is necessary to ensure the most economical and wise use of each dollar spent.

THE NEED TO REDUCE AMERICAN TROOPS IN EUROPE

Mr. BAYH. Mr. President, for 2 years the distinguished majority leader, Senator MANSFIELD, has been advocating a gradual reduction in the number of American troops stationed in Europe. Resolutions expressing the sense-of-the-Senate on this question have been introduced by Senator MANSFIELD in the 89th Congress and again in the 90th Congress. Both resolutions attracted many cosponsors and in April and May of last year, a combined subcommittee made up of members of the Foreign Relations and Armed Services Committees held hearings on Senator MANSFIELD's Senate Resolution 49, urging a "substantial reduction" in our permanent European force.

In testimony before the subcommittee former Secretary of Defense McNamara stated that a proposal for the redeployment of a number of American units had been presented to our NATO allies. Pending approval, it was expected that the redeployment of these troops to the United States would begin, in Secretary McNamara's words, "Soon after January 1, 1968." That approval was soon forthcoming but the redeployment is only now beginning. According to informed estimates, it will involve 34,000 military personnel and less than 20,000 dependents—out of a staggering total of nearly 600,000 military and civilian personnel now stationed in Europe.

In my judgment, and I believe it is the judgment of the distinguished majority leader who is the principal sponsor of the resolution, this redeployment of only 34,000 troops does not meet the test of "substantial reduction" as called for in Senate Resolution 49.

I was very interested, therefore, in the action last week of the distinguished senior Senator from Missouri during the debate on the military procurement bill. The amendment offered by Senator SYMINGTON once again questions the wisdom of maintaining large numbers of American troops on the European continent—along with a substantial number of dependents. I want to praise the Senator from Missouri and the Senator from Montana, and those Senators who joined in the enlightening colloquy that followed for keeping this vital issue before Congress and the American public. Unfortunately, their wise counsel has not been heeded.

In the aftermath of World War II, with the democracies of Western Europe in shambles and a Communist menace threatening the continent, the United States joined with its allies in the North Atlantic Treaty Organization to provide for the common defense of Europe. The establishment of satellite governments in Eastern Europe, the Berlin blockade, and the threat of Communist subversion within the Western democracies themselves—these were the circumstances surrounding the American military commitment in postwar Europe.

It is a commitment the United States has honored fully and will continue to honor. In fact, Mr. President, the United States is the only member of NATO to so honor its obligations. We have remained steadfast where others have found it convenient to hedge.

The question, Mr. President, is whether the maintenance of 350,000 military personnel, accompanied by well over 200,000 dependents, is an absolutely necessary and essential ingredient of that commitment? I think not.

The Assistant Secretary of Defense for International Security Affairs, Paul Warnke, speaking on "The Future of NATO" pointed out:

> The validity and credibility of the U.S. commitment to collective security in Europe . . . is not a matter which depends now or would depend in the future on the specific level of U.S. troops maintained in Europe at any one time.

And the former Secretary of Defense, Robert McNamara, testifying on the 1969 defense budget, expressed a similar view when he said:

> The willingness of the United States to fulfill its obligations (in NATO) should no longer be in question, quite apart from the presence or absence of a particular number of U.S. troops on the ground.

The inference to be drawn from these statements is, I think, perfectly clear. Not only is it not essential that we maintain 350,000 troops in Europe, it is even less essential that 250,000 civilian personnel are also being maintained at a great cost to American taxpayers and to the stability of the dollar.

Mr. President, it should be clear to any interested observer that the whole environment of Europe has changed drastically since the ominous events of 1949 and 1950. With American economic assistance, and under the protective shield of American forces, the Western European nations have recovered and prospered. Today they are capable of more fully meeting the economic cost of European defense—a cost which the United States has been forced to bear almost singlehandedly for nearly one-quarter of a century.

At the same time, there has been a noticeable "thaw" in Eastern Europe. The nationalistic sentiments of the satellite countries have reasserted themselves as we are witnessing today in Czechoslovakia. The nations of Eastern Europe, to be sure, remain communistic, but the specter of a monolith centrally directed from Moscow has diminished. The possibility of dealing with the individual nations of Eastern Europe is opening before us. If we act wisely, American foreign policy may pierce the Iron Curtain.

In short, the Europe of 1968 is very different from the Europe of 1948 and even very different from the Europe of 1958. Today there is little likelihood of a Russian military attack against Western Europe. This is in sharp contrast to the tinderbox situation that prevailed

in the late 1940's and early 1950's and which led to the formation of NATO.

The maintenance of 350,000 American troops—plus dependents—on the European Continent has become, in effect, a symbolic gesture. In my judgment, it is an all too costly symbol.

Do we need to maintain 600,000 Americans in Europe to convince both friend and foe alike that the United States respects its obligations to the mutual defense of Europe? Again, I think not. With our greatly increased airlift capability, estimated to be 10 times as great in early 1970 as it was in 1960, Europe is only hours away. Large numbers of American troops could be permanently reassigned to the United States and still be redeployed in Europe on short notice if the need arises.

We have managed ourselves into a position, ironically, where it is now more likely that our European friends, even more than our enemies, need this concrete evidence of America's commitment. That, indeed, is a sad commentary.

The political-military situation clearly calls for a reappraisal of America's European posture. There is, in addition, a very compelling economic argument for a reduction in the level of American troops. The very unfavorable balance of payments and the resulting gold drain have focused attention on the cost of maintaining our troops. Exact cost figures are classified. Nevertheless, educated estimates indicate that the cost is nearly $2.5 billion annually, with the net foreign exchange cost approximately $800 million.

Mr. President, newspapers daily carry the statements of European central bankers clamoring for America to measure up to its fiscal and monetary responsibilities and restore confidence in the dollar. At the same time that these voices exhort the United States to put its house in order, their governments have failed to ease the pressure on our balance-of-payments deficit by assuming a greater share of their own defense costs. This contradiction was pointed up by former Secretary McNamara when he noted that Western European nations seem to feel that—

> On the one hand there should be no diminution in U.S. forces, but that on the other hand the responsibility for meeting the balance-of-payments deficit caused by such large scale continuing U.S. deployments in Europe is none of Europe's affair.

He went on to say:

> The United States would welcome suggestions from our allies on how to meet this pressing problem, since its solution cannot be further postponed.

Those suggestions have not been forthcoming. We can no longer wait. The recent announcement that more than 50,000 reservists will be called up in the next few months provides an added measure of urgency. The time to act is now. All indications are that the Senate is prepared to support a strategic redeployment and planned reduction of American troops and supporting personnel.

An increasing share of the costs and sacrifices necessary to provide European defense must be borne by those who benefit from it most—our European friends themselves.

VIVA SENATOR YARBOROUGH IN HIS CONTINUED EFFORTS FOR BILINGUAL EDUCATION

Mr. WILLIAMS of New Jersey. Mr. President, a very interesting conference, sponsored by the Southwest Educational Development Laboratory, was held in Austin, Tex., last week. This National Conference on Educational Opportunities for Mexican-Americans gave the standing-room-only conference participants the opportunity to review and discuss recent legislation relating to education of the Mexican-American; see and hear demonstrations of current programs. The presentations included indications of effectiveness, descriptions of environmental conditions and population characteristics of school and community, and administrative practices; identify institutions presently concentrating on education of the Mexican-American and to determine the means each is using to approach the task; identify areas of critical need in order to give direction to planning programs to meet immediate needs, moving toward accomplishment of long-range objectives.

No conference on Mexican-American education would be complete without the man who has assumed the leadership and responsibility in the Senate for making these programs a reality, my distinguished colleague, the senior Senator from Texas, RALPH YARBOROUGH.

Senator YARBOROUGH, in his eloquent manner, delivered the closing address at the conference and, in so doing, collated the notes taken in the discussion groups, with the visual images from the excellent demonstration programs and the unresolved questions raised in the coffee breaks, and challenged the conferees to meet the educational needs of our bilingual communities across the country. We are finally realizing that the teaching of Spanish, French, German, Chinese, and Yiddish as the bridge to the official language of English is not enough. We are now convinced that we must actually teach portions of the school curriculum concurrently in different languages. This is true bilingual education.

Senator YARBOROUGH, in his address, put it this way:

> It is the teachers in the classrooms—not the guns on the battlefields—that made the greatness of America. The strength and greatness of America is measured by the ideals of the civilization which you instill in the children of America—the strength of America does not lie in the devastation rained on the people of other continents by our explosive chemicals. . .
>
> The carrying out of a bilingual education idea will mean an America where the people understand each other. Until every American can understand the language with every other American we will have a basic weakness in our society. When every American understands every other American, then we will have a stronger America, a united America, a forward-moving America . . .
>
> Let us continue to listen, and let us teach all of society to do so.

Mr. President, I ask unanimous consent that the address of Senator YARBOROUGH at the National Conference on Educational Opportunities for the Mexican-American be reprinted in the RECORD at this time so that we can have the benefit of his latest remarks on this vital education issue.

Mr. President, this conference was a testimonial to the excitement that Senator YARBOROUGH has generated by urging the passage and funding of the Bilingual Education Act. I was pleased to join in cosponsoring that legislation, and I certainly join him in urging a greater appropriation for one of our most important education programs—bilingual education.

There being no objection, the excerpts were ordered to be printed in the RECORD, as follows:

TEACHING SOCIETY HOW TO LISTEN

(Excerpts from address of Senator RALPH W. YARBOROUGH before the National Conference on Educational Opportunities for the Mexican-American, sponsored by the U.S. Office of Education and the Southwest Educational Development Laboratory, Austin, Tex., April 26, Commodore Perry Hotel)

Thank you and good evening. It's both a pleasure and an inspiration to be here this evening with so many friends, some of whom I know and some of whom I have yet to meet.

Some time ago someone made a humorous observation about how to improve society. He said: "If one could only teach the voters how to talk and the politicians how to listen, society would be quite civilized."

By repeating that, I do not intend to offend any voters nor politicians who may be present.

I repeat it because it is relevant, because in the case of the Mexican-American minority in this country, the rest of society has not yet learned to listen. And until all of us learn to listen to what is being said, we are not going to see improvement of their educational opportunities or of any other opportunities.

I think it is safe to say, though, that we have come a long way in the last few years toward securing better educational opportunities for our Mexican-American students.

Slowly, this country is beginning to listen:

There is now an Interagency Committee on Mexican-American affairs in Washington whose purpose it is to assure that Federal programs are reaching Mexican-Americans.

The Department of Health, Education, and Welfare has sworn in a Special Advisory Committee on Mexican-American Education, whose purpose it is to make recommendations to the Commissoner of Education.

The Office of Education has a permanent Mexican-American Education Unit.

The Bilingual Education Act has become a law.

And, for the past three days, the Office of Education in concert with the Southwest Educational Development Laboratory has sponsored this Conference.

We are learning to listen and we have come a long way. The corollary, of course, is obvious: We still have a longer way to go than the distance we have come, and a lot more to hear:

As of 1960, Mexican-American educational achievement in Colorado, California and Texas was LESS than that of any other group in 1950!

As of 1960, fifty per cent of the Mexican-American population in the same three states had less than an eighth grade education.

In Texas, forty per cent of the Spanish-speaking population were found to be functionally illiterate.

These statistics give some indication as to how much work is yet to be done—they are statistics of quantity. But quality is a big factor we need to look at as well.

In the area of bilingual education—and by that I mean true bilingual education; not just the teaching of say, Spanish as the bridge to the official language of English—but actively teaching portions of the school curriculum concurrently in two languages; in the area of bilingual education, it can

safely be said that there is little quality now evident in America.

At present, Under Titles I and III of the Elementary and Secondary Education Act there may be as many as twenty-five "beginnings" of bilingual programs, but many of these are of questionable quality, and none of them approach true, model bilingual efforts.

But the Bilingual Education Act is not suffering just from a derth of quality programs to fund; it too is suffering from quantity. When we passed the Act, we authorized the appropriation of $15 million for the fiscal year 1968—but no funds were appropriated. Thirty million are authorized for the coming fiscal year—1969. But the Administration has requested only $5 million, one dollar out of six!!

Currently, programs funded under other Titles of the Elementary and Secondary Education Act are aiding only about 142,000 of the total of some three million children who need help in bilingual education. If the new law were fully funded at $30 million it would be possible to aid 215,000 more children—still a drop in the bucket.

If the Administration has its way—and I intend to see to it that it does not—only 35,000 more children will be helped during the next year through passage of this law—a goal that can barely qualify as an attempt to pay lip service to the great need that exists; and I choose my metaphor consciously. The recommendation of the Bureau of the Budget is such patent tokenism that if it were currency, it would be printed on tissue paper. The words of William Shakespeare seem appropriate to describe the Bureau of the Budget's inaction: "They have been at a great feast of languages, and stolen the scraps."

My observations so far indicate, I think, that—with the exception of the Administration's request for funding of the Bilingual Education Act—the Federal Government has moved forward in the area of providing better educational opportunities for Mexican-Americans. A framework, a foundation, has been provided upon which improvement can rest.

But the real job, the initiative, remains—as it should—at the State and local levels.

The Equal Educational Opportunities Survey—the so-called Coleman Report—completed in 1966, yields some very interesting information concerning the status of the Mexican-American children in our schools. These findings, I suggest, have particular relevance for local school superintendents and teachers.

It was found, for instance, that the elementary and secondary school level, Mexican-American students living in the same county as Anglo, English speaking students, had less volumes per pupil in the school library, fewer programs for the especially skilled and talented, fewer programs for the physically handicapped, fewer State and regionally accredited schools, and less access to free kindergartens and nursery schools than did Anglo students.

The findings concerning kindergarten seem to have particular relevance because the Report suggests that those Mexican-American students who attended kindergarten tend to achieve better than those who did not.

The major finding of the report, overall, was that family background and involvement in a child's education was the most important single factor in affecting a child's achievement in school. As for Mexican-American family involvement, however, it was found that its effect was small, compared to the English speaking Anglo majority, suggesting perhaps, that for some reason Mexican-American parents are unable to translate their interest into practices which re-enforce their child's achievement. It is my belief that their lack is due to the language barrier.

It would seem, then, that local schools could do more work in setting up outreach programs to involve the parents of Mexican-American children more in the educational process.

Finally, the report showed that the influence of the teacher is greater for Mexican-American students than for most other minority groups as well as for the Anglo, English-speaking students. In short, we need better trained teachers to work with our students. I note that one of the major functions of the Bilingual Education Act is to train such teachers. And the longer we put off that training, the worse the problem is going to become. You know, it takes at least a year longer to train a bilingual teacher than a monolingual teacher, and that extra year is on top of the acquisition of basic skills in the foreign language.

Finally, and most important, all of us must realize that when we address our attention to the issue of improving the educational opportunities of Mexican-Americans, we must really look at the larger issues upon which this depends. Not only must we strive—at the Federal, State, and local levels—to improve educational opportunities, but we must work to eradicate poverty, eliminate hunger and ill-health, improve housing conditions, and fight for increased employment opportunities. Education is but one strand in the fabric of life—and we must view life as a whole. In short, let us be wary of becoming myopic and let us not be afraid to channel our energies to all areas of need.

And, let us continue to listen, and let us teach all of society to do so.

The carrying out of a bilingual education idea will mean an America where the people understand each other. Until every American can understand the language with every other American we will have a basic weakness in our society. When every American understands every other American, then we will have a stronger America, a united America, a forward-moving America.

It is the teachers in the classrooms—not the guns on the battlefields—that make the greatness of America. The strength and greatness of America is measured by the ideals of the civilization which you instill in the children of America—the strength of America does not lie in the devastation rained on the people of other continents by our explosive chemicals.

Ours is an exciting day. As the late John F. Kennedy said in his Inaugural Address: "I do not believe that any of us would exchange places with any other people, or any other generation. The energy, the faith, the devotion which we bring to this endeavor will light our country and all who serve it . . . and the glow from that fire can truly light the world."

He was speaking of you—you serve the country in its highest public service calling. It is the teachers of our nation who will light those fires which will truly light the world. It is in the wisdom and the dedication of our teachers and school leaders that our hope for the future rests. If you succeed,—our civilization flourishes. Your idealism and your success in transmitting those ideals to the youth of America are the true guide posts of our future greatness or the lack of it.

May it be greatness!
God Bless You.

A VIEW OF PRESIDENT JOHNSON FROM 3,000 MILES AWAY

Mr. INOUYE. Mr. President, it is sometimes difficult for us to evaluate an important historic development if we are too close to the situation. Most Americans have praised President Johnson's selfless decision to withdraw from Presidential politics in order to devote himself completely to the search for national unity and world peace. But now, a respected British newspaper, the London Daily Mail, has come up with a penetrating and thoughtful analysis of the President's decision. And this view from England makes some points that have perhaps been overlooked here in America.

The article is entitled "This Decision of a Great Man." I should like to quote a few statements from it:

Because we are used to politicians declaring that they put their country before their party, and lying as they do so, we throw up a barrier of scepticism against a man who says he puts his country before himself, and speaks the literal truth.

He was doing this not because he was tired of the carefully fostered hatred and abuse with which he has been showered, but because of the solemn regard he has for the task with which the American people entrusted him by the largest majority in America's history.

". . . Lyndon Johnson was a Liberal before it was fashionable, an integrationist in the face of his political and personal danger . . . a man whose origins in poverty had given him an unshakeable sympathy for those who slip off the vastly wealthy plateau of American enterprise.

His place in American history in secure. When the dust has settled, his achievement will be seen.

I believe that we can all get a better understanding of President Johnson's decision by reading this newspaper article, written from the perspective of 3,000 miles away. Accordingly, I ask permission to insert the article in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the London Daily Mail, Apr. 2, 1968]

THIS DECISION OF A GREAT MAN

(By Bernard Levin)

We can say one thing right away: on Wednesday, November 6, Lyndon Johnson's overwhelmingly predominant feeling will be one of relief.

We can now say a few more things.

The pigmies who have dominated the British political scene for so long, and their Transatlantic counterparts now fighting for the crown, have conditioned us all to thinking that pettiness, duplicity and self-regard are the inevitable concomitants of the political life.

Because we have forgotten what greatness is, we are unable to admit that it still exists. Because largeness of stature is so rare, we do not recognise it when it is before our eyes. Because we are used to politicians declaring that they put their country before their party, and lying as they do so, we throw up a barrier of scepticism against a man who says he puts his country before himself, and speaks the literal truth.

When President Johnson said: 'I shall not seek, and I will not accept, the nomination of my party,' he was not 'doing a Nasser'; he was announcing his decision to step voluntarily down from the job of the most powerful man in the world.

HIS CONCERN

He was doing this not because he was tired of the carefully fostered hatred and abuse with which he has been showered but because of the solemn regard he has for the task with which the American people entrusted him by the largest majority in America's history.

For so huge has been the torrent of propaganda against President Johnson and the course on which he has steered America, that

we have been unable to understand (quite apart from the effect of those who made it their business to see that we did not understand) what manner of man this is.

Johnson was an anti-segregationist years before John Kennedy had a word to say on the subject of the Negro's place in American life.

Johnson was Joseph McCarthy's bitter political enemy, because of the private and public harm that that evil man was doing to the U.S., when John Kennedy was on the friendliest personal and political terms with McCarthy and Robert Kennedy was actually working for him.

HIS SYMPATHY

Johnson's mind grasped the realities of international power early and completely, and he was urging Eisenhower to stand firm at the time of the U-2 incident, when John Kennedy was counselling the contrary.

This is not to belittle the man, and President, Kennedy became. But Lyndon Johnson was a Liberal before it was fashionable, an integrationist in the face of his political and personal danger (he and his wife were roughed-up in Dallas during the 1960 election campaign by segregationist rednecks), a man whose origins in poverty had given him an unshakeable sympathy for those who slip off the vastly wealthy plateau of American enterprise.

These qualities he brought to the Presidency. And to them one more—and that one perhaps the most important—must be added. It is the understanding he has of the role of the President as both political leader and Head of State.

He learned first about the Presidency under Roosevelt; then he saw it from even closer quarters as Kennedy's vice-President; then finally during the years when the loneliest view in the world—that from the White House windows—was his.

And what he understood about the job, as all the greatest of his predecessors—Jefferson, Jackson, Lincoln, both Roosevelts, Truman, Kennedy—have understood, is that a house divided against itself cannot stand. The President must preside over a country united in its larger purpose, or disaster is inevitable, as those Presidents who failed to comprehend this truth—Grant, Wilson, Harding, Hoover—demonstrated.

That the United States is deeply divided is not Lyndon Johnson's fault. His policies, both at home and abroad, were right, and do not become wrong simply by reason of his submission.

In the U.S., he was right to fight racial discrimination and the cruelty of American poverty amid American affluence. Abroad, he was right to continue America's help to the free world and the world that wishes to be free.

HIS DESTINY

But too many people—some of them well-meaning, some of them malevolent, far more of them only ignorant and irresponsible—would not have it so. Lyndon Johnson, the man who would rather abandon his own destiny than see America torn apart, and the high and vital office of the Presidency damaged, has realised that those who would rather tear America apart than abate their own ambition had caused wounds that could not be healed if he were to fight for the nomination and the Presidency.

For that reason—because of his understanding of the role of the President as a unifying and life-giving force in American society—he has taken this decision.

And what a decision it is! Is there any precedent for it—the voluntary relinquishment of supreme power by a man who had only to fight to retain it, and does not lack the will to fight? Can you see the Wilsons and Heaths doing it?

The questions are too absurd to answer; in their absurdity is the measure of Johnson's action, and of the man.

HIS BATTLES

His place in American history is secure. When the dust has settled, his achievement will be seen. His battles for Civil Rights, for better education, for urban renewal, for care for the old, the sick, the forgotten, for the continuation of overseas aid—these things will in time be spoken of.

The legislation he got through Congress—first the measures for which Kennedy failed to compel acceptance, and then the even bigger body of his own measures—will be recognised, like Lincoln's emancipation of the Negroes and Roosevelt's New Deal, as work which helped to transform for the better the entire basis of American society.

I believe that over Vietnam, too, history will vindicate Lyndon Johnson. If aggression is in the future more cautious, if freedom is from now on more secure, it will be because "his shoulders held the sky suspended."

And if—as is obviously his dearest wish—he can succeed in the task to which he had now dedicated the remaining months of his Presidency, and find a just and durable peace in Vietnam, he will not even have to wait for history.

HIS SACRIFICE

Now, he prepares to watch the struggle for the succession, hoping that America can find a man to heal the terrible divisions that make such mock of American sacrifices. And as he contemplates the Americans who died in Vietnam, who died in the world war in which he served, who died in the strife of the race-torn cities, it would not be strange if into his mind were to come, as a valedictory, the most famous words in American history.

It is for us, the living, rather to be dedicated here to the unfinished work they have thus far so nobly advanced. It is rather for us to behave dedicated to the great task remaining before us, that from these honoured dead we take increased devotion to that cause for which they here gave the last full measure of devotion; that we here highly resolve that the dead shall not have died in vain, that this nation, under God, shall have a new birth of freedom; and that government of the people, by the people, and for the people, shall not perish from the earth.

A SALUTE TO THE INTERNATIONAL RED CROSS

Mr. DODD. Mr. President, last week's newspapers carried the welcome news that the 100 white mercenaries who have been interned in Rwanda after withdrawing from the Congo, had, after many delays, finally been repatriated to Europe. For a period of some months preceding this, their repatriation had been blocked because the Congolese Government had been demanding their extradition and had brought pressure to bear on the surrounding African countries to refuse overflight permission for planes assigned to evacuate the mercenaries.

The news of their evacuation was, therefore, particularly welcome as a confirmation of the triumph of moderation over the extremism which temporarily seemed to have victory in its grasp.

I want to take this occasion to pay tribute to the International Red Cross whose courageous commitment to principle, more than any other factor, was responsible for persuading the Congolese government to abandon its demand for extradition. The Red Cross deserves all the more credit because it fought this battle on its own, without the support of our own Government or any other major government.

I also wish to pay tribute to President Gregory Kayibanda of Rwanda, who refused to knuckle under to the pressures brought to bear against him by the Mobutu government, even when it severed relations with his tiny country.

For some reason, the press of our country virtually ignored the plight of the white mercenaries in Rwanda during the 6 months of their internment, even though the story had all the elements of personal and political drama. Because the episode is of more than passing interest from a historical standpoint, I would like to establish some of the essential facts and I would also like to insert into the RECORD my exchange of correspondence with the State Department on the subject.

The mercenaries who have now been evacuated were originally brought into the Congo by the Congolese Government, acting with our approval. The original contracts were entered into with the Tshombe government in 1964, and they were renewed by the Mobutu government when Mobutu took over in November of 1965.

At the time the mercenaries were brought into the Congo, more than half the country was under the control of pro-Communist rebels, and the Congolese army was abandoning one center after another. The small force of mercenaries turned the tide of battle; and in doing so, they rendered a highly important service to the Congo and to the entire free world.

The reasons behind the mercenary revolt in the summer of 1967 are obscure. From the available information, however, I am disposed to believe that it was a combination of reasons rather than any single reason.

For the period of some time prior to their revolt, there had been growing unease in the mercenary ranks about developments in the Congo.

Colonel Schramme, the mercenary leader, had assisted Governor Munango of Katanga in persuading the Katanga gendarmes to lay down their arms at the time of the Kinsangani mutiny in July 1966. He had done so only on the basis of an assurance from the Mobutu government that the Katanga gendarmes would be given safe conduct and that there would be no reprisals against them. When the Mobutu government dishonored this agreement by imprisoning Governor Munango and massacring the 400 Katanga gendarmes in cold blood, it is understandable that Colonel Schramme and the other mercenaries should have lost some of their appetite for their job and should have begun to fear for their own security.

Their apprehensions were fed by the virulent antiwhite propaganda conducted by the Congolese radio under the direction of its Prague-trained Minister of Information, Mr. Kandy.

It was also fed by the continuing atrocities against European residents of the Congo perpetrated by the police authorities and by units of the Congolese Army.

And, against this background, when the Mobutu government failed to pay the mercenaries their salaries for several months and then asked their senior offi-

cers to report to Kinshasa, the situation exploded.

The mercenaries seized a number of centers in the eastern Congo and then consolidated their forces at Bukave. There, the Congolese Army proved utterly incapable of dislodging them.

Meeting in Kinshasa in September of 1967, the Organization of African Unity voted unanimously to invite the International Red Cross to negotiate with the mercenaries for their withdrawal from the Congo. The International Red Cross agreed to accept this responsibility on the basis of the assurance that the mercenaries would be repatriated to their respective countries if they withdrew from the Congo into Rwanda, laid down their arms, and signed pledges that they would never again return to the Congo.

On the basis of the assurance conveyed to them by the International Red Cross, the mercenaries, after lengthy negotiations, withdrew from the Congo into Ruanda on November 4 of last year. There they were interned by the Rwanda Government, in anticipation of their evacuation to Europe.

But then the situation changed. The Organization of African Unity had set up a special subcommittee to pursue and, presumably, to implement the resolution adopted at the plenary session in Kinshasa in September. Meeting in Kampala, Uganda, after the mercenaries had withdrawn from the Congo, the subcommittee, apparently after violent internal disagreement, voted in effect to override the resolution adopted by the OAU conference and the understanding with the International Red Cross. It now took the stand that the mercenaries should not be repatriated unless their respective countries paid a ransom for them equivalent to the damage suffered by Bukavu and other centers where fighting took place.

Even in advance of this meeting, heavy pressure had been brought to bear on the surrounding African countries to refuse overflight permission to the Sabena Airlines aircraft which had been ready to effect the evacuation of the mercenaries immediately after their withdrawal into Rwanda.

In December, President Mobutu went one step further. He demanded that the mercenaries be extradited to the Congo, in clear violation of the resolution adopted by the OAU conference and of the agreement with the International Red Cross. And on December 28 he announced that the mercenaries would in fact be brought back to the Congo to stand trial.

I immediately dispatched a long telegram to Secretary of State Rusk in which, among other things, I said the following:

One does not have to approve the recent action of the mercenaries in order to oppose their extradition to the Congo. I personally believe that the mercenaries were terribly misguided in their revolt against the Congolese government and I welcomed the end of their insurrection. But there are moral and humanitarian principles involved in this situation, which apply all the more strongly to those who criticized or condemned the mercenary insurrection.

I feel strongly that our own honor is involved in this situation first, because of the very great influence we have with the Mobutu government; second, because it is generally believed that we gave our tacit approval to the OAU-International Red Cross plan to solve the mercenary problem without further bloodshed; and third, because there is an overriding moral and humanitarian responsibility which we simply cannot shirk even though the United States may not have been a direct party to the Red Cross Negotiations.

On checking into the situation, I discovered that the International Red Cross, as soon as it learned of the plan to extradite the white mercenaries to the Congo, had sent an urgent communication to President Kayibanda, of Rwanda.

This communication, which was signed by Mr. Gonard, president of the International Commission of the Red Cross, stated that the sending back of the white mercenaries to the Congolese Government, would constitute a violation of the principles of international law and of the rights of man. It underscored the fact that the Organization of African Unity had invited the Red Cross to proceed with the evacuation of the mercenaries after President Mobutu had promised that he would not seek their extradition to the Congo. And it recalled that the mercenaries had agreed to lay down their arms in the expectation that their lives would be spared and that they would be repatriated.

I also learned that the International Red Cross, even though it had no budgeted funds for the service, was continuing to pay for the upkeep of the mercenaries in their detention center; and I learned that it had been completely unsuccessful in attempting to raise additional funds to cover this cost from the United States and other member nations.

Rwanda is a very small country. It has no army worthy of the name, and from a military standpoint it is completely defenseless against its Congolese neighbors. It is, therefore, to the eternal credit of President Kayibanda, of Rwanda, that he listened to the urging of the IRC instead of to the threats of Mobutu.

On January 10, President Mobutu told the Congolese press agency that he intended to break off relations with Rwanda if it did not turn over the mercenaries to him promptly.

On the following day it was announced that the Congolese Government was, as of that day, severing all diplomatic relations with Rwanda and terminating all agreements between the two countries.

The communique issued by the Congolese Government charged the Government of Rwanda with failing to conform to the resolution of the OAU and with pursuing an anti-African policy.

Replying to Mobutu's threat to sever relations, President Kayibanda said the following on January 11:

The government of Rwanda has never had recourse to mercenaries and does not wish to have any in its country . . . We believe that an honest negotiation between states, in conformance with the resolution adopted by the OAU at Kinshasa, is the only possible way of resolving the question of the mercenaries . . . The meeting of the special commission of the OAU in Kampala completely reversed the spirit of the resolution adopted at Kinshasa, in coming out for the surrender of Colonel Schramme's men to Congolese justice. Since that time, General Mobutu has committed himself to the position which he had never previously proposed. What is he afraid of in returning the mercenaries to their country of origin?

It soon became clear that the African countries were anything but united in support of Mobutu's intransigent position. Many of them made no effort to conceal the fact that they had grave misgivings about repudiating the resolution adopted by the OAU conference and surrendering the mercenaries to the notoriously bloody justice of the Congolese Government.

A few weeks ago, the Mobutu government decided to back down on its demand and to permit the evacuation of the mercenaries from Rwanda.

This decision of the Mobutu government can only be applauded. Unquestionably the reputation of the government can only gain from this decision. It is to be hoped, that having learned something of the advantages of temperance in this situation, it will be willing to show itself equally temperate in future situations.

Mr. President, I ask unanimous consent to insert into the RECORD at this point the text of the two communications I sent to the State Department on the question of the white mercenaries and the text of the replies I received from the Department.

There being no objection, the communications were ordered to be printed in the RECORD, as follows:

DEPARTMENT OF STATE,
Washington, D.C., February 14, 1968.

HON. THOMAS J. DODD,
U.S. Senate,
Washington, D.C.

DEAR SENATOR DODD: In replying to your letter of January 11 concerning the *ex-Congo* mercenaries, I am sure you will appreciate that many of the questions you raise are problems which involve the interests, points of view and current efforts of a number of African and European nations. To answer all of them in an unclassified communication in the form in which they have been posed would raise questions involving confidences which those nations have reposed in us. In some cases, these involve conversations held with the Vice President.

With regard to certain specific points raised in your letter that can be answered in an unclassified communication:

The Organization of African Unity (OAU) did pass a resolution in September at Kinshasa condemning the aggression of the mercenaries, insisting that the mercenaries leave Congolese territory immediately with the help of competent international bodies, and calling upon all member states to assist the Congo to put an end to the mercenaries' activities if they did not accept immediate withdrawal. The International Committee of the Red Cross (ICRC) was subsequently asked by the OAU by letter to undertake arrangements for the peaceful evacuation envisaged by the resolutions. The ICRC agreed to do so and for several weeks engaged in difficult and complex negotiations in an effort to comply with the request of the OAU. You may recall that at one point we informed the ICRC that if a truly international airlift could be organized in connection with the ultimate evacuation of the mercenaries and Katangans, we would be willing to take part.

The ICRC's arrangements were not yet complete when a new mercenary incursion took place in Katanga, followed by the withdrawal of the mercenaries at Bukavu into Rwanda. Faced with these circumstances, the OAU Sub-Committee on Mercenaries

created at Kinshasa in September met again in Kinshasa and adopted a new resolution, the terms of which I believe you are familiar with. This second resolution was considered by the Sub-Committee and the OAU Secretary General to have superseded the September resolution. At this point, the Red Cross role was terminated, and while a Red Cross presence continued at Kigali for humanitarian reasons involving refugees and wounded, the ICRC has since had no formal role to play to our knowledge, nor has it been asked by the OAU, which now considers itself responsible for the mercenaries, to assume a further role.

The United States did, as I indicated, support the efforts of the ICRC to arrange for a peaceful evacuation of the mercenaries from the Congo, even to the extent of responding favorably to a request for aircraft. With the transfer of the location of the mercenaries from the Congo to Rwanda, we have continued to encourage an equitable solution to the problem consistent with the questions of political security and humanitarian considerations involved.

The Congolese Government, as a member of the OAU, originally subscribed to the resolution of September but subsequently regarded it as superseded by the second resolution in November.

The question of overflight rights for a Belgian airliner is of course a matter for the Belgian Government and any action they may have taken in this regard would be between themselves and the countries concerned. The overflight question, in any case, did not arise until after the second Kinshasa resolution.

We have no confirmed information that any Katangans involved in the Kisangani meeting of 1966 were in fact "massacred."

The original decision to employ mercenaries was a decision taken by the Congolese Government in its own national interest. Mercenaries subsequently saw action in a variety of places in the Congo and were indeed at Stanleyville at the time of the liberation of the hostages.

We do not know whether any of the current group in Rwanda were among those at Stanleyville. The balance sheet of their contribution to the Congo is primarily a matter for the Congolese themselves to judge, but to the extent that they did render useful service, it is the more regrettable, as you indicated in your earlier cable, that those who remained were so misguided as to terminate their association through a revolt endangering the lives and property of so many persons, both Congolese and European.

I trust the foregoing is responsive to your inquiry and will be helpful in answering questions.

Sincerely yours,

WILLIAM B. MACOMBER, Jr.,
Assistant Secretary for Congressional Relations.

JANUARY 11, 1968.

Mr. H. G. TORBERT, Jr.,
Acting Assistant Secretary for Congressional Relations, Department of State, Washington, D.C.

DEAR MR. TORBERT: I am in receipt of your letter of January 5 in which you reply to my wire expressing concern over the announcement that the white mercenaries now being detained in Rwanda would be extradited to the Congo and put on trial.

To be frank and blunt, I do not believe that I have ever received a more evasive or less satisfactory reply to a communication on an urgent matter. Let me therefore pose several specific questions to which I would like to have specific replies.

(1) Is it accurate that the Organization of African Unity, meeting in Kinshasa in September, passed a resolution calling for the withdrawal of the mercenaries from the Congo, asked the International Red Cross to act as intermediary in negotiating their withdrawal, and assured the International Red Cross that if the mercenaries would lay down their arms and withdraw, the Mobutu government would not demand their extradition and they could be repatriated to their respective countries?

(2) Is it accurate that the State Department gave its tacit approval to this arrangement?

(3) Does the State Department approve of the subsequent action of the Organization of African Unity, demanding that a ransom be paid by the mercenaries' several countries of origin before they are released from Rwanda? If the State Department does not approve, has it made its views known to the more moderate governments who are members of the Organization of African Unity and friendly to the United States?

(4) Did the State Department use any of its considerable influence in an effort to persuade the African countries involved to grant over-flight permission for a Sabena Airlines aircraft, so that the mercenaries could be removed from Rwanda in accordance with the original understanding between the Organization of African Unity and the International Red Cross?

(5) Does the State Department support the current efforts of the Congolese government to compel the extradition of the mercenaries from Rwanda? And if it does not support these efforts, has it used its influence in any way to persuade the Mobutu government to abandon a project that can only earn it the contempt of civilized mankind?

(6) In the light of the half hour show trial and public execution of former Prime Minister Kimba and his associates, and in the light, too, of the massacre of the 400 Katanga gendarmes who gave up after the Kisangani mutiny after having received an assurance of safe conduct, does the State Department have any confidence in the quality of Congolese justice?

(7) Is it not accurate that a majority of the mercenaries in question were employed with our approval both by the Mobutu government and by the Tshombe government before it; and that they rendered important services to the Congo and to our own interests? And is it not accurate that at least a number of these mercenaries were members of the column which moved on Stanleyville, with the moral suport of the entire civilized world, in an effort to prevent the massacre of Dr. Carlson and the other whites who were being held as hostages by the leftist Simbas?

(8) Concerning the question of the mercenaries, has the State Department been in touch with or given its support to the International Red Cross, which has described the proposed extradition as a violation of human rights and of international law?

I earnestly hope that, in replying to this communication, the Department will not send me another completely meaningless and evasive letter. I do not ask whether the Department has *followed* "the evolution of events". This I take for granted. I ask what the Department is doing to *influence* the course of events.

I look forward to hearing from you at an early date.

THOMAS J. DODD.

DEPARTMENT OF STATE,
Washington, D.C., January 5, 1968.

Senator THOMAS J. DODD,
U.S. Senate,
Washington, D.C.

DEAR SENATOR DODD: Secretary Rusk has asked me to reply to your cable of December 29, 1967 in which you express your concern that the mercenaries currently under detention in Rwanda might be returned to the Congo for trial.

The problems posed by the revolt of the mercenaries in the Congo and their subsequent withdrawal into Rwanda have been, as you know, difficult and complex, and we have followed their evolution closely. I appreciate your informing us of your views, and assure you that we shall give them careful consideration.

Sincerely yours,

H. G. TORBERT, Jr.,
Acting Assistant Secretary for Congressional Relations.

DECEMBER 29, 1968.

Hon. DEAN RUSK,
Secretary of State,
Department of State:

I am disturbed by a dispatch from Kinshasha in this morning's Washington Post which quotes President Joseph Mobutu as saying that the white mercenaries now being held in neighboring Rwanda would be brought back to the Congo for trial.

One does not have to approve the recent action of the mercenaries in order to oppose their extradition to the Congo. I personally believe that the mercenaries were terribly misguided in their revolt against the Congolese government and I welcomed the end of their insurrection. But there are moral and humanitarian principles involved in this situation, which apply all the more strongly to those who criticized or condemned the mercenary insurrection.

The 100 or more mercenaries involved left the Congo for Rwanda after lengthy negotiations conducted by the International Red Cross and on the basis of an assurance conveyed to them by the Red Cross that they would be repatriated to their respective countries if they withdrew from the Congo into Rwanda, laid down their arms, and signed pledges that they would never again return to the Congo.

On checking into this situation, I discovered that the International Red Cross, having learned of the plan to extradite the white mercenaries to Mobutu, sent an urgent communication several days ago to President Kayabanda of Rwanda. This communication, which was signed by Mr. Gonard, President of the International Commission of the Red Cross, stated that the sending back of the white mercenaries to the Congolese government would constitute a violation of the principles of international law and of the rights of man. It underscored the fact that the Organization of African Unity had invited the Red Cross to proceed with the evacuation of the mercenaries after President Mobutu had promised that he would not seek their extradition to the Congo. And it recalled that the mercenaries had agreed to lay down their arms in the expectation that their lives would be spared and that they would be repatriated.

Mr. Gonard's letter also confirmed that, in line with its humanitarian mission, the International Red Cross stood ready to assist in the evacuation of the mercenaries.

I feel strongly that our own honor is involved in this situation first, because of the very great influence we have with the Mobutu government; second, because it is generally believed that we gave our tacit approval to the OAU International Red Cross plan to solve the mercenary problem without further bloodshed; and third, because there is an overriding moral and humanitarian responsibility which we simply cannot shirk even though the United States may not have been a direct party to the Red Cross negotiations.

I earnestly hope that the Department will use its influence to persuade the Mobutu government to honor its commitment and to abandon its request for the extradition of the mercenaries. The Mobutu government should be told in the bluntest terms that the extradition of the mercenaries would dishonor the Congo because it would be regarded by civilized opinion as a flagrant violation of a pledge of safe conduct.

I also hope that the Department will use its influence with the Mobutu government

and with the more moderate membership of the OAU to bring about the early repatriation of the mercenaries, in line with the agreement negotiated by the IRC.

THOMAS J. DODD,
U.S. Senator.

BELL CONTRACT SETS PATTERN FOR PENSIONS

Mr. HARTKE. Mr. President, it is welcome news that the Communications Workers of America and the Bell System have reached a significant new 3-year contract in settlement of the strike which has been in progress since April 18.

Among the significant provisions one which stands out as a beacon to lead the way for others is the agreement to provide for vested pensions. This is directly in line with the position I have repeatedly taken as a consistent advocate of providing irrevocable pension protection for workers regardless of what may happen to disrupt the company-employee relationship for those who have served long and well. In this Congress, as in the 89th and 88th as well, I have offered the pension protection bill now before the Finance Committee to insure workers against the loss of pension rights. Too often this has occurred through no fault of the worker. The vesting provisions of the CWA-Bell contract agreement guarantee that the worker who has attained 40 years of age with a record of 15 years with the company will, whether or not he continues to retirement age as its employee, receive benefits at retirement proportionate to his service.

Too long and in too many pension programs it has been possible for a worker to serve 20, 25, or even 35 years without any possible assurance that he will collect the pension he was long since promised and expecting at the time he retires. In some cases, a longtime employee may leave the company to take a job elsewhere for personal reasons—perhaps not even in the same industry, or perhaps a thousand miles away in order to be near family members, for example. But in doing so, he forgoes all rights in his pension in many a case where he is not himself a contributor. In short, he has no vested right in the benefits no matter how long he has worked there, unless he is still there when he reaches retirement age.

This has long had an effect of jeopardizing the pension, not only by employees decisions but frequently in cases where the company is sold, goes out of business, or in some other manner fails to come through with the pension as scheduled. This, of course, was notoriously the case in South Bend when Studebaker discontinued its auto plant there. I assume there is little likelihood that such a fate would befall the Bell System, but the vesting provision is one which deserves widespread emulation. I would point out that not only does it give the employee a guarantee of benefit from 15 years or more of service, but it will automatically increase the mobility of all Bell System employees. No longer for them will there be the hard question of whether to forego the pension rights or move to a new job—after 15 years, doing so will not entail the loss which chains workers frequently to their jobs when they cannot afford to leave because they cannot afford to lose the promised security for their later years.

Further, there will now be guaranteed, effective June 1, 1969, a minimum monthly pension for all of $125 per month at age 65 with 20 years of service. But also of real significance is the fact that in the computation of benefits, where previously social security payments were counted in part toward the minimum monthly payments, all deductions for social security are now eliminated. Now the $125 per month minimum will be a figure provided over and above social security. Breaking the relationship puts the two systems, private and public, into a stronger supplementary position for each other to the greater benefit of the retired worker.

Mr. President, I congratulate both labor and management for successfully negotiating their new contract. Both sides, including the top leaders of the companies and my good friend President Joe Beirne of the union, have bargained in the best traditions of the labor movement. In doing so, they have overcome their past disagreements and restored this great public utility to good internal relationships between employees and company.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER (Mr. JORDAN of Idaho in the chair). Is there further morning business? If not, morning business is concluded.

MESSAGES FROM THE PRESIDENT

Messages in writing from the President of the United States submitting nominations were communicated to the Senate by Mr. Geisler, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session,

The PRESIDING OFFICER laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(For nominations this day received, see the end of Senate proceedings.)

VISIT TO THE SENATE BY MEMBERS OF CONGRESS OF GUATEMALA

Mr. CARLSON. Mr. President, we are honored to have as guests of the Senate today Members of the Congress of Guatemala. They are touring the United States. They are now visiting the Nation's Capital and they will visit some of our larger cities. They are going to visit the Tennessee Valley Authority; they are going out into the Midwest to the farm areas of States like Nebraska, and across the Nation.

We were privileged to have them today as guests of the Committee on Foreign Relations.

I wish to introduce our guests to the Senate at this time. They are Congressman Alfonso Molina Flores, Congressman Ramior Humberto Alfaro Escobedo, Congressman Emilio Simeon Avila Torres, Congressman Gonzalo Humberto Salguero Alarcon, Congressman Jose Rodolfo Ogaldez Giron, and Congressman Ofelio Terreaux Chavez.

[The distinguished visitors rose in their places and were greeted with applause, Senators rising.]

Mr. MORSE. Mr. President, I am sorry that I could not get to the luncheon today to honor these distinguished guests. However, as the chairman of the Subcommittee on Latin American Affairs I do wish to welcome them.

RECESS

Mr. CARLSON. Mr. President, I ask unanimous consent that the Senate stand in recess for 5 minutes so that Senators may greet our visitors.

The PRESIDING OFFICER. Without objection, it is so ordered.

Thereupon, at (2 o'clock and 15 minutes p.m.) the Senate took a recess until 2:20 o'clock p.m.

During the recess, the distinguished guests were greeted by Members of the Senate.

On expiration of the recess, the Senate reassembled and was called to order by the Presiding Officer (Mr. MUSKIE in the chair).

OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1967

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Chair lay before the Senate the unfinished business.

The PRESIDING OFFICER. The bill will be stated by title.

The ASSISTANT LEGISLATIVE CLERK. A bill (S. 917) to assist State and local governments in reducing the incidence of crime, to increase the effectiveness, fairness, and coordination of law enforcement and criminal justice systems at all levels of government, and for other purposes.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

Mr. MANSFIELD. Mr. President, will the Senator yield to me, without losing his right to the floor?

Mr. McCLELLAN. I am glad to yield to the distinguished majority leader.

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum, and it may very well be a live quorum, so I would suggest that the attachés notify all Senators to that effect.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll, and the following Senators answered to their name:

[No. 126 Leg.]

Allott	Holland	Morton
Anderson	Hruska	Mundt
Bartlett	Inouye	Scott
Boggs	Jackson	Sparkman
Byrd, W. Va.	Javits	Stennis
Case	Jordan, Idaho	Talmadge
Church	Mansfield	Thurmond
Ellender	McClellan	Williams, Del.
Fannin	Miller	Young, N. Dak.
Griffin	Morse	

Mr. BYRD of West Virginia. I announce that the Senator from Alaska [Mr. GRUENING], the Senator from Missouri [Mr. LONG], and the Senator from Utah [Mr. Moss] are absent on official business.

I also announce that the Senator from Pennsylvania [Mr. CLARK], the Senator from Michigan [Mr. HART], the Senator from Massachusetts [Mr. KENNEDY], the Senator from New York [Mr. KENNEDY], the Senator from Ohio [Mr. LAUSCHE], the Senator from Minnesota [Mr. MCCARTHY], the Senator from Minnesota [Mr. MONDALE], the Senator from Oklahoma [Mr. MONRONEY], the Senator from New Mexico [Mr. MONTOYA], the Senator from Maryland [Mr. TYDINGS], and the Senator from Ohio [Mr. YOUNG] are necessarily absent.

Mr. DIRKSEN. I announce that the Senator from Utah [Mr. BENNETT] is absent on official business.

The Senator from Colorado [Mr. DOMINICK], the Senator from Wyoming [Mr. HANSEN], the Senator from Oregon [Mr. HATFIELD], the Senator from California [Mr. KUCHEL], and the Senator from Kansas [Mr. PEARSON] are necessarily absent.

The PRESIDING OFFICER. A quorum is not present.

Mr. MANSFIELD. Mr. President, I move that the Sergeant at Arms be directed to request the attendance of absent Senators.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Montana.

The motion was agreed to.

The PRESIDING OFFICER. The Sergeant at Arms will execute the order of the Senate.

After a little delay, the following Senators entered the Chamber and answered to their names:

Aiken	Fong	Muskie
Baker	Fulbright	Nelson
Bayh	Gore	Pastore
Bible	Harris	Pell
Brewster	Hartke	Percy
Brooke	Hayden	Prouty
Burdick	Hickenlooper	Proxmire
Byrd, Va.	Hill	Randolph
Cannon	Hollings	Ribicoff
Carlson	Jordan, N.C.	Russell
Cooper	Long, La.	Smathers
Cotton	Magnuson	Smith
Curtis	McGee	Spong
Dirksen	McGovern	Symington
Dodd	McIntyre	Tower
Eastland	Metcalf	Williams, N.J.
Ervin	Murphy	Yarborough

The PRESIDING OFFICER. (Mr. GORE in the chair). A quorum is present.

ABSENCE OF SENATORS FROM SENATE CHAMBER

Mr. MANSFIELD. Mr. President, I must express a keen sense of disappointment at the fact that it has taken at least 45 minutes to obtain a quorum on the floor of the Senate today. We have a good quorum in town, but too many Senators are absent who are vitally interested in this measure or, at least, so they have said. In addition, we have too many Senators who are preparing to go out of town.

I think I should point out that the leadership has been trying to get the pending bill out of the committee and before the Senate for a year and a half. It is one of the most important bills which will come before the Senate this year. If, perchance, the attendance does not increase measurably, it is my intention to forgo this travesty, this charade, and move that the Senate stand in adjournment until Monday noon.

If the absent Senators and those who are planning to go out of town or those who have other duties do not see fit to be in the Chamber to attend to their primary responsibilities, then the Senate will wait until they return so that we can get down to the consideration of this most important, significant, and timely legislation.

Mr. MURPHY. Mr. President, in defense of at least a few Senators, I must state that a rather important luncheon is taking place. That luncheon should be over momentarily. It is honoring the new representative of the State of Israel. I know that many Senators are there.

Mr. MANSFIELD. Mr. President, will the Senator yield?

Mr. MURPHY. I yield.

Mr. MANSFIELD. Mr. President, all of the Senators in attendance at that luncheon came to the Chamber and answered to their names. That luncheon is nearby.

Mr. MURPHY. Mr. President, I thank the Senator.

RIOTS AND THE MARCH ON WASHINGTON

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the following articles be printed in the RECORD:

An article entitled, "March of Poor Formally Starts From Memphis," written by Charles N. Conconi, and published in today's Washington Star.

An article entitled, "Seven Organizers of March Arrested in Mississippi," published in today's Washington Star.

An article entitled, "Marchers Wind up Lobbying," written by Willard C. Clopton, Jr., and Bernadette Carey, and published in today's Washington Post.

An article entitled, "Rowdy Group of Area Youths Severely Beat District of Columbia Policeman," written by Michael Drosnin, and published in today's Washington Post.

An article entitled "Protests by Students Continue To Spread," published in today's Washington Post.

An article entitled "Stage 1 of Poor March Over," published in today's Washington Daily News.

A story by Robert C. Maynard, appearing in today's Washington Post, titled "Memphis Prepares Poor People's Drive."

A column by James J. Kilpatrick, appearing in today's Washington Evening Star, titled "Permissiveness Gone Mad in the Universities."

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

MARCH OF POOR FORMALLY STARTS FROM MEMPHIS—MRS. KING LEADS RITES IN TRIBUTE TO SLAIN HUSBAND

(By Charles Conconi)

MEMPHIS.—Mrs. Martin Luther King Jr. was to open the march to Washington today for the Poor People's Campaign by placing a marble slab to the memory of her slain husband on the balcony of the motel where he was slain.

The 250-pound marble marker, surrounded by floral tributes, was carved with the name of the murdered leader of the Southern Christian Leadership Conference, the dates of his birth and death and a quotation from Genesis reading:

"And they said one to another, Behold, this dreamer cometh. Come now therefore and let us slay him . . . and we shall see what will become of his dreams."

From the memorial ceremony in front of room 306, Mrs. King and the Rev. Ralph D. Abernathy were to lead the first group of campaign marchers on the first leg of their route to Washington.

The demonstrators gathered in the small motel parking lot were scheduled to follow Abernathy, through the streets of Memphis towards the city limits, to board buses for Marks, Miss., about 70 miles distant. Marks is a town that is becoming an increasingly important symbol for the campaign.

CUTS SHORT VISIT

It was reported here that a group of Southern Christian Leadership Conference staff organizers were arrested in that Mississippi Delta town yesterday and that violence broke out when state troopers moved in to force demonstrating students away from the jail where the organizers were held.

Abernathy, who heads the SCLC, was told of the incident while meeting in Washington with Interior Secretary Stewart Udall. Abernathy said he passed his unverified report to the secretary, and asked to be excused.

Abernathy was accompanied on his visit to Udall by two members of the National Indian Youth Council, Victor A. Charlo, of Missoula, Mont., and Melvin D. Thom, of Berkeley, Calif., who presented several "demands" to the cabinet officers.

These included separate but equal Indian communities, a guaranteed income, and teachers and counselors responsive to Indian community needs.

"We need jobs, housing, economic development. We want these things on our own terms," Thom said.

SEES "RACIST SYSTEM"

He said that as the chief spokesman for Indians in the American government, the Department of Interior" has been failing us."

"It is built and operates under a racist and paternalistic and colonialist system," he said.

Udall reacted immediately after one of the Indians, Tillie Walker, who works for the United Scholarship Fund for Indians in Denver, Colo., told him that members of the Bureau of Indian Affairs are telling Indians not to join the Poor People's Campaign.

Miss Walker said that the implication to at least two Indian reservations—at Fort Berthold, N.D., and Standing Rock Reservation in South Dakota is that "Indians don't work with black people."

Udall immediately turned to Robert L. Bennett, his commissioner of Indian Affairs and told him to investigate the charge.

"If anyone in the Indian Bureau is attempting to discourage people . . . (from joining the campaign) . . . they are going far beyond their proper right," Udall said.

WELCOMED BY UDALL

Before Abernathey left, Udall told him: "I don't resent your coming. I welcome your coming. I hope your visit is productive," and warmly shook Abernathy's hand.

Earlier yesterday, Abernathy had met with Secretary of State Dean Rusk, who said "it is too late in our history for our country to accept discrimination in American society."

But Rusk said of campaign demands that money for the Vietnam war be channeled instead toward helping the poor that "the entire human race faces an overriding prob-

lem—how to organize a decent peace in the world."

Abernathy said later that he was "pleased" with his three-day meetings with cabinet officials, congressmen and other government officers.

"I am pleased because the poor people themselves spoke up in the most profound and eloquent terms and expressed discontent and dissatisfaction with this government," he said. But he said kindness and sympathy are not enough. "We demand our God-given and Constitutional rights," he said.

"They have made no guarantees or any promises," Abernathy said after meeting with congressional leaders. "I have detected a sympathy on the part of people with whom I have met, but that sympathy alone will not solve the problem—we want action."

Considerable concern is felt here that violence could break out in Marks tonight when several hundred demonstrators from Memphis move into the Quitman County community to prepare for the trip to Washington.

In Marks the marchers will make up a "freedom train" and a mule-drawn train, both leaving for Washington next Tuesday.

The freedom train riders will build the shack and tent city to be called "The New City of Hope," the day after the train arrives May 12.

Marks has also been SCLC's symbol of extreme poverty and Abernathy said that it was there he saw King cry over children who had no food.

When he arrived at the airport in Memphis, Abernathy said the incident in Marks proves "we live in a sick and racist nation."

SOME 5,000 AT RALLY

At a massive rally here last night of more than 5,000 persons at the Mason Temple Church of God in Christ, several of the speakers referred to Marks and the violence that had broken out there.

Speaking in the arched, gymnasium-size-room with bare steel support rods crisscrossing the roof Abernathy told the shouting, waving, applauding audience:

"No violent acts or threats against us in Marks or in Boston or anywhere else will keep us from going on with the poor people's campaign. It is on and it is going to stay on."

The Rev. James Bevel, SCLC's organizer here, angrily told the audience in reference to the Marks incident that when America can beat black children, "it's time to go to the king (Washington)."

Bevel, who reportedly has been having trouble finding volunteers to stay in Washington indefinitely, possibly through the summer, demanded:

"When I ask you to send your children with me, you look at me and tell me about a damn high school diploma. But you will send your children when (President) Johnson will come and ask your children to go to Vietnam."

MRS. KING CHEERED

The rally's most emotional moment came when Mrs. King walked to the speakers' platform, the site of her husband's last public address, on the spot where he stood that night on April 3. She said, "It doesn't really matter what happens now. I've been to the mountaintop." He was murdered the following day.

Mrs. King, her eyes sparkling at the huge ovation she received, told the audience that she had returned to Memphis to see "that my husband's dream will be realized."

She related her decision to stand behind him during his years as a civil rights leader and the bombings of their home and said she was thankful to God for being able to know him.

Then Mrs. King, who had once been a concert singer, said she wanted to sing an old spiritual King had loved, "Sing, Sweet Little Jesus Boy."

With her eyes closed and her hands pressed tightly, she stood back from the microphones and sang in a strong, clear soprano. Her voice carried through the massive arena-church and the audience women wept and whispered softly, "Yes, . . . Oh yes . . . Oh yes."

GOES TO MOTEL

It was shortly after midnight here when a limousine brought Mrs. King to the Lorraine Motel, her first visit to the place where her husband died nearly a month ago.

Abernathy took her to the balcony in front of King's room, 306. He pointed to the balcony floor where her husband fell and then leaned over the railing to show the way King had been talking to his driver.

"Then he (King) straightened up," Abernathy continued, pointing to the building across the parking lot and through the trees, now thick with leaves, to the window, where the assassin stood to fire.

Meanwhile in Winston-Salem, N.C., Georgia Gov. Lester Maddox today urged the federal government to "issue a restraining order" to stop the campaign, which he said was not for poor people but "for and by the punks." His prepared remarks were for a speech at Wake Forest University.

In Washington, city officials and a representative of the National Capital Parks Service met with members of the Senate District Committee yesterday behind closed doors to brief them on plans for the campaign.

Among those attending were Mayor Walter E. Washington, Deputy Mayor Thomas Fletcher, District Public Safety Director Patrick V. Murphy, Chief John B. Layton and Asst. Fire Chief William C. Weitzel acting for Chief Henry Galotta.

SEVEN ORGANIZERS OF MARCH ARRESTED IN MISSISSIPPI

MARKS, MISS.—Seven organizers of the Poor Peoples March on Washington were arrested yesterday during a tense confrontation stemming from their efforts to recruit high school students for the Washington demonstration.

State troopers rushed to the aid of local authorities when about 500 students gathered outside the Quitman County Jail to demand the release of one of the march organizers.

The troopers, formed a flying wedge with riot guns held across their chests, waded into the students when they ignored orders to disperse. The students broke and ran.

A camera crew that was on the scene at the time said the troopers put aside their rifles at the last minute and routed the students with billy clubs, but the highway patrol and local police denied that clubs were used.

No shots were fired.

APPEARS AT SCHOOL

Authorities said the trouble started when Willie Bolden, long a leader of the Southern Christian Leadership Conference, sponsor of the campaign, appeared at all-Negro Quitman High School during the noon recess and urged students to join the Washington march.

When the students refused to return to classes after the recess, Sheriff L. V. Harrison arrested Bolden and charged him with trespassing and disturbing the peace.

This, officials said, touched off a spontaneous march on the jail, where officials conferred with student leaders and informed them that Bolden could be released only if bond were posted.

When this failed to satisfy the demonstrators, state troopers were summoned and the students were told they had two minutes to leave or they would be arrested.

SIX REPORTED TREATED

The nearest hospital, at Clarksdale, about 20 miles southwest of Marks, reported that six persons from the demonstration had turned up seeking treatment. Officials said none was admitted and none appeared seriously hurt.

In addition to Bolden, those taken into custody were identified as Chester Thomas Jr., Canton, Miss.; Major Wright, Grenada; Jimmy L. Wells, Atlanta; Marjorie Hyatt, Atlanta; Andrew Marrisett, Atlanta, and Doris S. Baker of Marks.

All were taken before a justice of the peace and their bonds set at $500 each.

MARCHERS WIND UP LOBBYING—DELEGATIONS OF POOR VISIT RUSK, UDALL

(By Willard Clopton Jr. and Bernadette Carey)

Leaders of the Poor People's Campaign yesterday ended three days of buttonholing high Federal officials with their demands and predicted that "constructive results" will flow from the effort.

The Rev. Ralph David Abernathy and about 70 of his followers voiced their grievances to Secretary of State Dean Rusk and Interior Secretary Stewart L. Udall, making a total of seven Cabinet members visited during the Campaign's opening phase.

Mr. Abernathy last night flew to Memphis, where on Thursday he will begin organizing the first of nine regional caravans that are expected to bring several thousand demonstrators to Washington during the week of May 12.

"SHANTYTOWN" PLANNED

The plan is for them to set up a "shantytown" here and remain camped in the city until Congress approves a massive program of aid for the Nation's poor.

Before leaving the city, Mr. Abernathy said that the congressional leaders and agency heads he visited had been polite and generally sympathetic to his program.

But he warned: "We don't just want sympathy. We want action."

The visit to Udall yesterday afternoon was thrown into confusion when, midway in the meeting, Mr. Abernathy suddenly said he had received a report that six persons sympathetic to the Campaign had been shot at Marks, Miss., one of the planned assembly points for the protest marchers.

Reporters scrambled for telephones and Mr. Abernathy left the meeting briefly for a press conference at which he said that the report "only goes to show that we live in a racist society in a very sick nation . . ."

REPORT ERRONEOUS

A few minutes later, however, he announced he had been told by telephone that the report was erroneous.

It was subsequently learned that seven persons were arrested in Marks in connection with a disturbance at a local school. Mississippi authorities said the arrests stemmed from a demonstration led by an official of the Southern Christian Leadership Conference of which Mr. Abernathy is president.

In an action related to the County Council President William W. Greenhalgh yesterday called for regional cooperation to prepare for the arrival of the protest marchers in the Washington area.

He disclosed that a meeting "to discuss the lack of regional planning on civil disturbances" will be held at 10:30 a.m. Friday between Assistant U.S. Attorney General Fred M. Vinson Jr. and representatives of suburban area jurisdictions.

At his press conference in Rockville, Greenhalgh said he had arranged for up to 200 Maryland State policemen and Maryland National Guardsmen to be available on a standby basis when marchers from the Great Lakes region enter the County—sometime between May 11 and May 15.

A spokesman for the organization Greenhalgh set up to cope with the details of the march said food and shelter for the marchers would be contributed by churches. The marchers would be housed in the churches and parish halls, nearly a dozen of which had volunteered their facilities.

In another development, Assistant District Corporation Counsel Richard W. Barton told the U.S. Supreme Court that because of a recent Federal court decision, the city theoretically would have to provide welfare benefits to any of the demonstrators who say they intend to stay here indefinitely.

The city is appealing the ruling and is seeking the restoration of its one-year residence requirement for welfare applicants.

SPEAKS TO RUSK

Mr. Abernathy and his group told Secretary Rusk during an 80-minute visit that the United States should withdraw from Vietnam and use the money saved to stamp out poverty at home.

Mrs. Martha Grass, a mother of 11 from Ponca City, Okla., said: "I feel we have no business in other countries' affairs, when we have enough trouble of our own."

Sanford Gottlieb, an official of the Committee for a Sane Nuclear Policy, observed that "the Book of Matthew says that where your treasury is, your heart is also.

"Seventy-nine per cent of our budget goes for defense and the space program, while only 10.7 per cent, goes for health, education and welfare. One has to conclude . . . that this is not a welfare state but a warfare state."

Albert Foyles, 25, of Baltimore, said it is "completely unfair that we of the poor masses should be beaten, kicked, harassed and jailed and then be asked to go to fight a war that we have no reason to go to . . . The draft is one good way to get rid of us."

Rusk thanked the group for coming and promised a later response to the demands.

"TIME HAS COME"

He added, "I think we all agree the time has come to make good on the great commitments of our Constitution" and to act to assure all persons of their basic rights.

He added that "both as an official and in private life I am doing everything I can to move promptly in that direction."

At the Interior Department, where Secretary Udall was accompanied by John Bennett, commissioner of Indian Affairs, testimony focused on the plight of the American Indian.

Melvin Thom, a member of the Painte tribe from Nevada, said the Nation's system for dealing with Indian needs "is sick, the disease is paternalism and the Department of Interior is the carrier." He said Indians want a "separate but equal" community, free of the white man's cultural influence.

Udall told a reporter after the meeting that no decision has been reached regarding the Campaign demonstrators' use of Federal parkland here as a campsite.

ROWDY GROUP OF AREA YOUTHS SEVERELY BEAT DISTRICT OF COLUMBIA POLICEMAN

(By Michael Drosnin)

On Saturday night, Marshall E. Lohr, 37, a District of Columbia policeman attached to the canine squad, was walking his police dog near his home in the Prince Georges community of West Lanham.

He approached a group of teen-agers who had tried to crash a birthday party in his block, and, who, he said, were shouting obscenities. Lohr told them to "tone down."

According to Lohr, the youths retorted, "We know you're a cop and we know that's a police dog."

Lohr said he then took the dog back to his house because he "wasn't looking for any trouble" and returned to the group of teenagers, repeating his request.

"The next thing I knew," said Lohr, "I was lying on the ground and a neighbor told me to hold still. Then the ambulance came."

Lohr was taken to Prince Georges General Hospital where he was in satisfactory condition yesterday with a broken nose, a fractured jaw and a concussion.

According to Prince Georges police, he was attacked by two of the teen-agers he had told to quiet down, a 16-year-old and a 17-year-old from nearby Woodlawn. Both have been charged with assault with intent to maim and have been released to their parents.

The youths were arrested at Prince Georges Hospital where the 16-year-old, a 6-footer who weighs 245 pounds, had gone to get a cut hand treated.

Lohr's wife, Elizabeth, was standing in the hospital hallway outside an emergency room where her husband lay unconscious.

Two youths, she said, were sitting a short distance away laughing. Then one looked into the room where Lohr was awaiting treatment and said, "Oh, boy, he's really hurting, isn't he."

When Mrs. Lohr identified herself to the teen-agers she said they answered, "We're going to get your house next." A few minutes later Prince George's police arrived and took the youths into custody, acting on information supplied by neighbors.

According to Sgt. Lohr's Metropolitan Police superiors, he was out of uniform and unarmed when he confronted a group of five youths near his home at 5405 76th ave. The group, four boys and one girl, ranged in age from 15 to 17.

Lt. George Greggs of the Metropolitan police said that the youths told Lohr, "You wouldn't be so big without that dog," and then called him a "nigger-lover."

Wanting to avoid trouble, Lohr according to Greggs, gave the dog to his wife who had come out to see what was happening.

When he returned to the teen-agers, Greggs said that one of the youths hit Lohr and knocked him to the ground and then kicked him while he was down. Neighbors said the girl screamed "You've killed him."

As the youths ran back to their car, neighbors began to converge on the scene. The car, they said, sped away into a dead end street and then came back without its headlights on toward Lohr, who was lying in the intersection. Several neighbors pulled Lohr onto the sidewalk as the car sped away, the youths shouting obscenities out of the windows.

Lohr has served in the District Police Department for 14 years and has lived in the West Lanham neighborhood for seven. Neighbors described him as "an easy-going guy who doesn't bother anyone."

One neighbor, John Moye, 5406 76th ave., said that Lohr walks his police dog through the area every night. "He's like our security patrol," said Moye.

From his hospital bed Lohr commented to a reporter, "I made it through the war and got injured in the peace."

He was referring to the fact he came through the Washington riot without a scratch only to be attacked and beaten in front of his Prince George's home in what his wife describes as a "quiet, quiet section of very nice families."

PROTESTS BY STUDENTS CONTINUE TO SPREAD

Student demonstrations spreading from colleges to high schools combined to keep thousands of young Americans from their classrooms yesterday.

Twenty-two students of the Stony Brook, N.Y., State University began a sit-in at the school business office, protesting the presence of county police on the campus. The police moved in after arresting 33 students on charges of possession and sale of drugs in a January raid.

Defying a threat of wholesale suspensions, pupils—mostly Negroes—renewed sit-in demonstrations at four Cincinnati public high schools to protest disciplinary regulations. Police arrested about 100 for ignoring orders to disperse. School Supt. Paul Miller had already announced that 1400 pupils involved in sit-ins at six high schools Tuesday would be suspended at least 10 days.

HOUSE ARREST

Judge Benjamin Schwartz of the Hamilton County Juvenile Court backed Miller with an order placing all suspended pupils under house arrest. He said they could go out in public only if accompanied by a parent, and must be home by 9 p.m. A 12-hour sit-in at the South Bend, Ind., school administration building Tuesday ended with the arrest of 72 adults and 59 juveniles on trespass charges. The demonstrators were protesting the presence of armed guards in three high schools, one predominantly Negro and two predominantly white, where there had been recent disorder in the halls.

At Columbus, trustees of Ohio State University voted for a disciplinary hearing for 75 Negro students who seized the school's administration building last Friday, complaining of "black student problems."

PRINCETON LAYS PLANS

[At Princeton, N.J., the United Press International reported, the president of Princeton University warned a student group which plans a massive Columbia-style sit-in today that police will be brought in if "the regular and essential" operations of the college are interrupted.

[Robert F. Goheen, responding to reports that the Princeton chapter of Students for a Democratic Society (SDS) has scheduled a sit-in at Nassau Hall, outlined steps the university will take if trouble breaks out.

[The SDS wants the university to sever its connections with the Institute of Defense Analysis and provide campus draft counseling for students.]

FALSE REPORT OF SHOOTINGS IN MARKS—STAGE 1 OF POOR MARCH OVER

(By David Holmberg)

Rev. Ralph Abernathy took advantage of the arrest of seven Poor People's Campaign workers in Marks, Miss., yesterday and ended the first phase of the campaign here with a moving plea for a non-violent revolution.

The successor to Dr. Martin Luther King interrupted the final session of testimony before Interior Secretary Stewart Udall by poor people from thruout the nation to tell a stunned crowd of newsmen and onlookers at the Interior Department that several campaign workers in Marks had been arrested, and "six have just been shot." He said a school teacher had also apparently been shot.

The report of the shooting was later proven false, altho the arrest in Marks of seven student organizers of the campaign for "disturbing the peace" was confirmed. The arrests came after a tense confrontation between state troopers and police.

(This is the report by United Press International from Marks.

(State troopers rushed to the aid of Marks' authorities when about 50 students gathered outside the jail to demand the release of one of the seven march organizers.

(The troopers, forming a flying wedge with riot guns held across their chests, waded into the students when they ignored orders to disperse. The students broke and ran. No shots were fired.

(Authorities said the trouble started when Willie Bolden, a longtime leader of the Southern Christian Leadership Conference, turned up at the school during the noon recess and urged students to join the Washington march.

(When the students refused to return to classes after the recess, sheriff L. V. Harrison arrested Mr. Bolden and charged him with trespassing and disturbing the peace.

(This, officials said, touched off a spontaneous march on the jail, where officials conferred with student leaders and informed them that Bolden could be released only if bond were posted. When this failed to satisfy the demonstrators, state troopers were summoned and the students were told they had two minutes to leave or they would be ar-

rested. The flying wedge followed when they didn't.)

The meeting at Interior here was quickly adjourned after a brief statement by Mr. Udall, and Rev. Abernathy and telling a crush of reporters that the "shootings" showed "we live in a racist society, a very, very sick society. It may be that sickness so acute that it is unto death."

"We realized this," he added, "and this is why we dreamed the dream (of the Poor People's Campaign) of Dr. Martin Luther King."

He said, "We will not let this (the "shootings") deter us, just as we did not let the death of Dr. King deter us. We are not going to call the campaign off. All we want them to do is to call off their violence. We will give all we have. We are ready to join right now with Martin Luther King and Medgar Evers and the others who died for justice."

Pleading with his followers "not to turn to violence," Rev. Abernathy said, "they must arm themselves with the sword of truth and put on the breastplate of righteousness; we must put on the whole armor of nonviolence and stand up against this evil system seeking to destroy us."

Rev. Abernathy begins the march today from the site of Dr. King's assassination. He said he was "highly pleased" with the three days of meetings with Cabinet members and the Congress that climaxed with the news from Marks.

The minister said the officials had received the poor people with "kindness and sympathy" but added that "we don't need sympathy and we need more than kindness."

He said earlier, following testimony before Secretary of State Dean Rusk, "We have discovered a new power. It is not white power, it is not black power, it is poor people power."

Sanford Gottlieb, director of SANE, told the Secretary—who took notes thru most of the testimony—that "the ICBM has not been invented yet to parry the Molotov cocktail." He said there is "one America for people who are comfortable and one for the poor."

Responding to the hour-long testimony, Secretary Rusk said, "The entire human race faces the overriding problem of how to organize a decent peace in the world. Within that framework of historical necessity we could have our debate on how it could be achieved."

He said, "Every citizen must be given the rights and privileges and opportunities that go with citizenship in our society."

At Interior, the speakers concentrated on the problems of the Indian. One of them, Melvin D. Thom, of the American Indian Council, said, "The system and the power structure serving us is a sickness . . . paternalism is a vice and the Secretary of Interior is a cancer."

The speakers also rapped what they called "tokenism" on the part of the government.

Secretary Udall told them that "non-violent protest is an essential part of democracy," and that he had had "some success" in his seven and a half years in the job "but I don't think we've had enough."

MEMPHIS PREPARES POOR PEOPLE'S DRIVE

(By Robert C. Maynard)

MEMPHIS, May 1.—An emotional, sometimes weeping, sometimes chanting rally of 6000 persons prepared tonight for the launching of the Poor People's Campaign caravan to Washington.

Mrs. Martin Luther King Jr., wife of the murdered civil rights leader, sang to the hushed and weeping audience a spiritual that had been her husband's favorite, "Sing, Sing, Little Jesus Boy, We Didn't Know Who You Was."

But Mrs. King, a former professional singer, made it clear in a speech that she wished for no one to become preoccupied with her husband's death but instead she wanted Negroes to fight ever harder for their freedom.

The Rev. Ralph D. Abernathy, successor to Dr. King as president of the Southern Christian Leadership Conference, said:

"For any of you who would linger in the cemetery and tarry around the grave, I have news for you. We have business on the road to freedom."

"We must prove to white America that you can kill the leader, but you cannot kill his dream."

Mrs. King told the audience, which included many of the sanitation workers whose strike Dr. King was assisting when he was slain on April 4, "It's not going to be easy on the road to Washington or on the road to freedom. Some more people are going to pay the supreme sacrifice."

After the rally, Mrs. King made a pilgrimage to the Lorraine Hotel and visited the room where Dr. King was staying the night he was shot.

The Poor People's Campaign will begin its march from Memphis to Marks, Miss., Thursday morning, after Mr. Abernathy sets a star into the cement outside the motel room where Dr. King was killed, in honor of the slain Nobel Peace Prize winner.

The Rev. James Bevel, a close King aide and a top SCLC official, told the rally tonight, "There is a conspiracy against black people in America. Unless we change the definition of a black man, white America will liquidate black people."

Mr. Bevel, quoting from the Biblical reference, "His knees hold their peace, the very stones will cry out," told the audience that black Americans may have no opportunities beyond the present to make their voices heard for their freedom.

"When you see the cities burning," Mr. Bevel said, "the stones are crying out." But he said white America will not much longer tolerate rioting among Negroes.

The rally was held in the enormous sanctuary of the Church of God in Christ, the last place at which Dr. King gave a public address, on the evening of April 3.

PERMISSIVENESS GONE MAD IN THE UNIVERSITIES

(By James J. Kilpatrick)

NEW YORK.—The trustees of Columbia University were ten days late in calling in the cops. By their spineless unwillingness to act at the very outset of the insurrection, they made their own miserable contribution to the anarchy that is spreading a typhus contagion across American campuses this spring.

The student revolutionaries should have been warned, then arrested, then expelled, at their first defiance of university rules. Instead, the administration vacillated. It was willing to negotiate; it would treat with the invaders; it would suspend construction of a controversial gymnasium as a gesture of appeasement. This was foam-rubber firmness and no wonder the students hooted the trustees down.

What in the name of heaven has happened to our college and university administrations? The series of outrages began at Howard University in Washington on March 19, when student insurrectionists seized the administration building and held it for five days.

Thus inspired, students at Bowie State University in Maryland went on a similar rampage; they blocked driveways, seized the university switchboard, banned President Samuel L. Myers from the grounds, and began deliberately wasting water and electricity. Someone had taught them, presumably, that this was free speech.

The contagion spread to Virginia Union University in Richmond; to Virginia State College in Petersburg; on April 7 to Tuskegee Institute in Alabama, where students chained the doors of an administration building and kept trustees captive for 13 hours. In other manifestations, student insurrection hit Colgate, Western Michigan, the University of Georgia, Long Island College.

At Barnard College in Manhattan, the administration groped abjectly with the problem of young Linda LeClair, a student who had lied—lied brazenly and willfully—in order to deceive the college as to her place of residence. The case caused serious embarrassment to Barnard. Linda had to be punished; the college denied her access to the snack bar.

Here and there, it is true, a few public officials have reacted with firmness. Maryland's Gov. Spiro Agnew closed Bowie State. The Tuskegee trustees moved decisively against offenders. Generally, the pattern has been a pattern of administrative surrender. It has been a pattern of permissiveness gone mad, of tolerance turned inside out. In the process, the whole meaning of a university has been lost.

If a university fails to maintain conditions of free inquiry, it fails in its primary function. But freedom demands order. It demands discipline. It demands a sense of hierarchy, in which the students are inferior to their masters. What kind of free inquiry was possible at Columbia with the insurrectionists in charge? The zoo has been surrendered to the gibbons, the asylum yielded to the inmates. Students who wanted to pursue their education were effectively prevented from doing so. This was an exercise in healthy dissent? In free speech? In peaceable assembly and petition? Nonsense. This was anarchy; it cannot be condoned.

An explanation may be sought, perhaps, in the perverted emphasis our society has placed upon "youth" and upon "equality." In our fatuous exaltation of the immature, we have tended to destroy the meaning of maturity. The notion that students are somehow equal to professors has undermined the whole of the academic relationship.

This is a case, if there ever were one, of "teaching bloody instructions, which, being taught, return to plague the inventor." The college administrators who have condoned, capitulated, and made concessions to student insubordination have asked for the chains on their doors. The trustees' decision to build this Columbia gym was not reached capriciously; it was the result of prolonged and serious deliberation. To suspend that decision in deference to the militants is to invite attack on other university policies. It is to destroy order and to abdicate responsibility. No institution, so governed, deserves to survive.

SUBSCRIPTION TELEVISION

Mr. MURPHY. Mr. President, in remarks before this body the distinguished senior Senator from Indiana, has given a progress report on an exciting new dimension in communication.

As Senator HARTKE has told us, subscription television is today on the threshold of becoming a reality. Refreshingly, it is not asking for special protection; it is not asking for Government subsidy; it is not asking for economic privileges. Subscription television is asking only for the opportunity to add to the choices available to the viewing public, to create something additional to what now exists.

I find it difficult to believe that subscription television will have the slightest effect on the number of free advertising-sponsored programs available to the viewer. As long as there are products to sell and advertisers eager to sell them, programs paid for by advertising will continue to be fully available.

In my opinion, subscription TV will strengthen the television industry by giving the public new options of programs to be seen. In so broadening the appeal of

the medium, the entire industry should profit, rather than suffer, as is often feared.

These fears are similar to those expressed, when television first entered the arena by members of the motion picture industry who predicted "a battle to the death of two giants." I recall saying then to these skeptics that, rather than such a battle, the industry would unite in a productive marriage from which would emerge a beautiful child in the form of an improved product and a thriving business for all concerned. This has been the case—and I predict now that the entire television industry will similarly thrive with the introduction of pay TV.

I particularly hope for early action by the Federal Communications Commission to permit pay TV because of a very important additional benefit. Subscription television today offers the best hope for relieving unemployment which has reached the crisis stage in one of our most important industries in California.

Motion picture making is one of the original American businesses. Along with related and dependent industries it has provided jobs for hundreds of thousands of Americans; it has given entertainment and enlightenment both to our citizens and to those around the globe; and it has contributed as much as a quarter-billion dollars to our balance of payments in a single year.

Senators will agree that I do not misuse the term "crisis" when I relate the current unemployment picture in the motion picture industry.

According to the Hollywood AFL Film Council, 31 percent of the industry's labor pool is currently unemployed. This compares with a national unemployment rate of 3.7 percent. These figures do not include actors, extras or musicians whose rate of unemployment is much higher.

Today less than 6 percent of the Hollywood members of the Screen Actors Guild are working. Also unemployed are 51 percent of the makeup artists, 75 percent of the electrical technicians, 40 percent of the sound technicians and cameramen, 51 percent of the property craftsmen, 35 percent of the transportation drivers, 75 percent of the grips.

Movie industry workers today are suffering a payroll loss of nearly $200,000 a day. And the loss is not theirs alone. The State of California, which is paying these unemployed more than $400,000 a week in unemployment benefits, is losing an estimated $53,000 a week which would go into the State unemployment and disability funds if employment were normal, and an additional $40,000 which these workers would pay in State income taxes if they were employed.

These are direct, tangible, accountable losses. How much more is lost in sales taxes, in taxes paid by businesses whose customers must tighten their purse strings, and in total economic effect of reduced employment would be impossible to compute.

Today, the rapid rise in unemployment in the industry is challenging Hollywood's title as the "Film Capital of the World." In an attempt to avoid the squeeze between limited markets and ever-rising costs, film makers and film making have gone abroad in search of natural settings and cheap labor.

In December 1967, American film companies were shooting 32 films abroad, 21 in the United States. In January, the number of films produced domestically dropped to 11.

We do not delude ourselves that subscription television will cure all of the industry's ills. But it would open for the industry a vast additional market with significant new sources of revenue.

Rosalind Russell put it very well in an interview when she said:

> Hollywood has changed, as everything has changed, as the world has changed. But it doesn't mean it is finished. I think pay television is just around the corner, and then this town will be prosperous as it never has been before. It won't be the same business we knew, but it will be very exciting.

Olivia de Havilland, Charlton Heston, Richard Boone, and Dana Andrews are among the solid citizens of cinema who look to subscription television as a means to assure the survival of Hollywood.

Ralph Bellamy looks for the movie industry to be "stimulated economically and artistically by the increased revenue and competition of premiering new films on subscription television."

Subscription television will make it financially possible for Hollywood to employ the best of talent in the finest of productions. Cultural and classical films which cannot now be justified at the box offices can become moneymakers for the film makers when that special portion of the viewing public which would enjoy such productions is gathered together into one audience.

All that the proponents of pay TV ask is the opportunity for their product to compete in the free marketplace; and I find it difficult, as one who believes in the free enterprise system and the value of competition, and of the consumer's right of choice, to justify denying them that right.

I join with others in Congress in expressing the hope that the Federal Communications Commission will act quickly to approve subscription television. In addition to the many compelling reasons which have been advanced, I urge this action because of the economic benefits subscription television will bring to an industry so vital to my State and to this Nation, an industry in great need of and most deserving of our consideration.

ORDER OF BUSINESS

Mr. MORSE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. MUSKIE in the chair). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MORSE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR ADJOURNMENT

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 12 noon tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1967

The Senate resumed the consideration of the bill (S. 917) to assist State and local governments in reducing the incidence of crime, to increase the effectiveness, fairness, and coordination of law enforcement and criminal justice systems at all levels of government, and for other purposes.

Mr. MORSE. Mr. President, I rise to oppose the pending measure. What began as a measure to extend Federal financial and technical assistance to State and municipal law-enforcement agencies has become a catchall for a variety of questionable proposals. I refer to the anti-Supreme Court measures, the proposed wiretapping legislation which has been lying around for over 15 years that I know of, and probably longer, and the gun restriction, which have been added to the original bill.

One might well call this another Christmas tree bill or an Easter basket of grievance legislation in the field of law enforcement. It has everybody's pet theories in it.

We need legislation to promote and maintain a government of law and order. My record for 23 years and more in the Senate leaves no room for doubt as to my position on that thesis. My speeches last year—two of them given upon the invitation of the President of the United States because he knows my position in regard to the enforcement of the law—relating to Newark, Detroit, and other riot-torn areas of the country, leave no room for doubt, as I think, that our government cannot be maintained by law unless the law is enforced.

But it is also important, Mr. President, to see to it that, in enforcing the law, the precious constitutional guarantees are carried out. A system of government by law is not helped by resort to what I consider police state tactics in the name of government by law.

My great concern, Mr. President, is that some of the procedures involved in this bill will do great damage to the perpetuation of a system of government by law and start us down the road toward government by police state procedures.

I hope that before we finish with this bill, it can be so modified that we can join hands in support of a measure that will keep within the framework what I believe are precious constitutional guarantees in writing.

Furthermore, Mr. President, it is in the hours of crises, and we are in a crisis, that we should be particularly jealous to see to it that our constitutional system of government by law remains inviolate.

Mr. President, if you believe it is the courts that cause crime, there is something in S. 917 for you. If you believe crime can be prevented—some kind of crime, anyway, if not crime on the streets—by tapping wires and picking up private conversations down the block, there is something in this bill for you.

If you believe that possession of guns by the wrong people can be prevented if there were no mail-order sales, there is something in this bill for you.

I do not say that because these measures do not stop crime absolutely they are not worthy of consideration, or that because Congress cannot do everything in the field of law enforcement it should do nothing. But I do question a procedure that brings to the Senate floor under the name of "safe streets," a whole series of unrelated proposals concerning court rulings, court jurisdiction, police eavesdropping, interstate sale of guns, all of which are heavily suspect first in their effectiveness and second in their constitutionality.

I doubt that any of these added committee provisions could stand on its own merits either within the committee or on the Senate floor. I doubt they could get a Presidential signature. But they are all getting a free ride on a short title of "Safe Streets."

The only part of this measure that is likely to do anything to make the streets safer is title I. It is designed to increase the manpower and improve the skills of local police forces. That is what the Federal Government can best contribute to safer streets.

Not the least of the problems with S. 917 is the scarcity of information about what is in it that is available to Senators who are not members of the Judiciary Committee. The only summary of its provisions that I have to go on is the one put together by the Justice Department. The bill was made the pending business yesterday, though my office was told the printed report would not be available until the afternoon. I obtained a copy of the text of the committee bill only in the morning.

The variety of subject matter and its complex legal and constitutional implications are not easy to follow under these circumstances. In my opinion, the Senate leadership would be well advised to put this measure over until after the Memorial Day holiday, so Members can have the time to give it the consideration it deserves, and to communicate with recognized constitutional authorities in this country.

Do not forget that in this legislation, we are overturning more than one Supreme Court decision in the area of the Bill of Rights. We are also entering the area of gun control legislation, on which the Supreme Court has only recently rendered an opinion that throws into doubt much of what is sought to be accomplished by gun control measures at any level: municipal, State, or Federal.

In the absence of adequate time to study this bill, to weigh the effectiveness of its various titles in dealing with any specific area of criminal activity or potential criminal activity, to compare its provisions particularly in title II with Supreme Court and other Federal court rulings and jurisdictions with what the Federal courts have decided on these criminal procedures and why, I certainly will vote against action by the Senate at this time.

The burden of proof for any legislation lies with its advocates. The advocates of this measure have not even given the Senate a chance to read the bill and to read a committee report on the bill before bringing it to the Senate floor. That is no way to sustain a burden of proof. That is no way to convince this Senator that what the Supreme Court has done to make the protection of the Bill of Rights meaningful in specific stages of law enforcement should be undone. It is no way to establish, indeed, that Congress can modify or repeal or change by legislation the Bill of Rights.

For the Bill of Rights, like the rest of the Constitution, is what the Supreme Court says it is until the Constitution is changed by amendment. That is elementary in constitutional law, as set forth in Marbury against Madison, that great American constitutional decision, handed down by the incomparable John Marshall, the Chief Justice of the United States.

I am well aware of the fact that there are many people in this country and in the Congress who would that the Supreme Court did not have the power to protect our constitutional rights. But we are a free people because that right was clearly vested in the Constitution to be administered, decided, and applied by the Supreme Court as Chief Justice John Marshall so clearly pointed out in the celebrated case of Marbury against Madison.

We are not going to change the fifth and sixth amendments with title II of this bill. We are not going to change, either, what the Supreme Court says about where and how the amendments apply to the details of criminal procedure, unless we deny jurisdiction over such cases to the Federal courts. Of course, the bill provides for that, too.

First, let me touch upon the efforts title II makes to change the Bill of Rights. Again, I draw from the summary of the provisions of title II of S. 917 as prepared by the Justice Department:

First. Confessions: makes voluntariness the sole criterion of admissibility of a confession in evidence in a Federal court, whether or not a defendant was advised of his right to silence or to counsel—section 3501(a)(b). This provision would overrule the Supreme Court's decision in *Miranda* v. *Arizona*, 834 U.S. 436 (1966). Section 3501(c) provides that a confession shall not be inadmissible in a Federal court solely because of delay between arrest and arraignment of the defendant. This provision would overrule the Supreme Court's decision in *Mallory* v. *United States*, 354 U.S. 449 (1957).

I have discussed both cases, Miranda against Arizona and Mallory against United States, on various occasions on the floor of the Senate.

I repeat that, in my judgment, the Supreme Court not only was right in both cases, but the decisions are also precious to the perpetuation of the civil liberties and the freedom of the American people.

I hope, Mr. President, that the time will not come when a Federal police officer can put his hand on your shoulder and say, "Come with me," and when you say "What for?" he replies, "We will tell you when we get you to the police station." He then takes you down to the police station and has unlimited time to so-call cross-examine you, Mr. President, which means, in police parlance, the third degree.

There are many varieties of the third degree, but anyone who thinks that they are passe in police departments across the country could not be more wrong.

We must maintain constant vigilance to see to it that police departments stay within the constitutional restrictions under which they must be made to function in order to keep a free society and not have a police society.

As chairman of the Subcommittee on the District of Columbia Committee, I yield to no Member of the Senate in the support I have given to provide the Police Department in Washington, D.C., for example, with every bit of help to which it is entitled under the Constitution. I do not propose to give it any extra constitutional prerogatives. I am not going to support the attempt to do away with Mallory against United States because it is particularly in times of crisis such as this that we need to have those protections made available to every citizen.

Do not forget that our whole system of criminal jurisprudence is based upon the presumption of innocence, the old Anglo-Saxon requirement that the State must establish guilt and not the arrested party his innocence. The presumption applies to the guilty as well as to the innocent. That is one of the principal ways we maintain in a free society a system of government by law rather than a government by police duress.

It is unfortunate that the pending bill contains this provision which I am presently criticizing.

Second. Eyewitness testimony: Makes eyewitness testimony that a defendant participated in a crime admissible in evidence in a Federal court, whether or not the defendant was previously identified at a lineup in the absence of counsel—section 3503. This provision would overrule the Supreme Court's decision in *United States* v. *Wade*, 388, U.S. 218 (1967).

It is easy for people to forget that very often we deal with people who get themselves into a position of arrest or detention for investigation which, of course, is the provision of the bill passed by the Senate last year with two of us, as the RECORD will show, expressing our opposition—the Senator from New York [Mr. KENNEDY] and myself. We could not even get a rollcall vote on that one. It had to go through by a voice vote. The Senator from New York [Mr. KENNEDY] and I made our record in opposition to the bill. No matter what semantics my colleagues may seek out to try to describe the provision in that bill, it did provide for arrest for investigation. When we give, as that bill did, the right to take a person to a police station and not arrest him, but merely hold him for investigation, that amounts to arrest for investigation.

When the police take a person into custody and hold him, the fact is, they are arresting him in his activities. They have no right to do it under the basic protection of criminal jurisprudence unless they have probable cause to do so. If they do have probable cause, then their duty is to arrest him. If they arrest him, then their duty is to take him forthwith

before a committing magistrate and let a judicial opinion pass upon the judgment of the police. That is a pretty precious right if we are going to remain free. That is a pretty precious right if we are going to have any liberties left. That is a pretty precious right if we are going to live in a free society and not a police state.

Oh, Mr. President, as one who for many years taught criminal law and criminal procedure, I am shocked by the bill in what it would do to free men in a supposedly free society, if it becomes the law of the land. Once again, I warn the American people, "Do not let the crisis of the hour cause us to create a greater crisis. A greater crisis to free society would be the denial of the precious civil and constitutional rights of free people."

Once again, I wish to be heard to say that we never can justify an expediency in order to accomplish an effect and a result.

An expediency is without principle, and an expediency cannot be reconciled with moral obligations.

I also want to make perfectly clear, as I have been heard so many times to say, that when you come to administer a law, you either administer it consonant with and consistent with accepted moral principles, or you cease to have a government by law. You cannot compromise the basic principles that I am talking about this afternoon and have a government with character left. A government without character is as reprehensible as is an individual without character.

Let me interpose here again to point out that the Senate is kidding itself if it thinks it can amend the Constitution or the Bill of Rights with this legislation.

Of course, it is not easy to find out, either, why these provisions are in the bill at all.

My office called the Senate Judiciary Committee yesterday, and was referred to its Subcommittee on Criminal Procedures. There, my office was told that copies of the hearings were not available except from the Government Printing Office. Senators have only their copies here on our desks in the Senate.

It is obvious to me that the bill is being moved under a procedure which says, the less anyone knows about its contents, the better.

Mr. McCLELLAN. Mr. President, will the Senator yield?

Mr. MORSE. Yes; I am glad to yield.

Mr. McCLELLAN. I share the Senator's concern about the hearings not having been printed or being here, or the report of the bill, but that is no fault of the subcommittee. I wanted that made clear. I did not insist that this bill, contrary to some editorial publication, come up at this time. I am perfectly willing to wait a week or a month.

Mr. MORSE. I hope the Senator understands that I do not allege that he had anything to do with the speed with which it came up.

Mr. McCLELLAN. I thank the Senator. We all know that we are under pressure to move at this session of Congress. As far as I am concerned, I will try to cooperate with the leadership in trying to expedite the business of the Senate, but I am not moving the bill under any conditions or manner or purpose to keep anybody from knowing everything that is in it.

Mr. MORSE. I want to assure the Senator that I am making no ad hominem argument which involves the Senator from Arkansas, the majority leader, or anyone else in the Senate. I do not argue that way. I am simply saying that, in my judgment, the bill should not be before us at this time. That is my judgment. In my judgment, as I said in the earlier part of my speech, it should have gone over until after Memorial Day. We need time to study the bill, with the great consequences involved in the bill, as individual Senators. I think we have the duty to our constituents to have the time to do our bookwork on a bill such as this. In my judgment, the pending bill calls for hours and hours of study on the part of each and every Senator if he is going to carry out his responsibilities to his State.

As far as I am concerned, it calls not only for that, but it calls for interviewing many experts in the field of constitutional law and other aspects of legal matters involved in the bill.

I am merely making the record to show that the Senator from Oregon disapproves of the time for scheduling the bill, without reference to individuals as individuals. I am protesting the particular procedure we are following, in what I think is obviously an attempt to dispose of this bill at the earliest possible time. So much is involved that it should not be disposed of at an early date. Any final bill that is passed should avoid the pitfalls that I think are involved in the bill before us. That is all I seek to point out.

The testimony of the Attorney General, Ramsey Clark, appears three times in the hearing record. On all three occasions, his remarks went to the provisions of S. 917, as introduced, which concerned aid to local law agencies. The reports of the Justice Department on the bills pending before the Judiciary Committee relating to confessions are adverse. I quote from the Attorney General's written report on S. 674, appearing on page 82 of the hearings:

> Prompt arraignment of arrested persons is necessary in a free society which values the fair administration of criminal justice. The decision in *Mallory* excluding confessions obtained during a period of unnecessary delay between arrest and arrignment is designed to withdraw the incentive which law enforcement officers may have to delay arraignment. It is intended to encourage them to bring an arrested person promptly before a judicial officer. It discourages prolonged incarceration and interrogation of suspects without giving them the opportunity to consult with friends, family, or counsel.
>
> An outright repeal of *Mallory* would withdraw the encouragement for law enforcement officers to arraign suspects promptly. It would leave the "without unnecessary delay" provision of Rule 5(a) of the Federal Rules of Criminal Procedure as a rule without any remedy.

It goes without saying that if the Mallory principle can be repealed, it would also leave without remedy that portion of the fifth amendment which guarantees that no person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law. But I think it is evident from subsequent decisions that the confessions standard is based upon the language of the Bill of Rights, as well as upon rule 5(a) of the Federal Rules of Criminal Procedure, and we are not going to repeal the Bill of Rights or alter it in any way with language like this. Let us face up to it, no matter what Congress passes, if, in fact, it is unconstitutional, it will be thrown out by the Supreme Court. I do not think we should be passing legislation with the grave doubts as to its constitutionality that this bill contains without giving it much more consideration than it is planned to give to it, unless the debate goes on for quite some time in the Senate.

In reporting on S. 1333, the Attorney General said in a statement appearing on page 109 of the hearing record:

> S. 1333 would authorize a state trial judge, in the exercise of his discretion, to admit into evidence items seized in violation of the Fourth Amendment as well as "voluntary" confessions obtained without Fifth and Sixth Amendment safeguards, if the trial judge determines that the exclusion of the evidence would result in a miscarriage of justice.
>
> The Department of Justice considers this legislation of doubtful constitutional validity. The authority granted Congress by Section 5 of the Fourteenth Amendment, the assumed constitutional basis for this bill, does not appear to permit Congress to pass legislation which grants state judges authority for avoiding constitutional standards.

This view of the Attorney General applies both to State and Federal proceedings. We cannot pass legislation which grants Federal courts authority for avoiding constitutional standards.

What Attorney General Clark wrote about S. 1333 applies to Congress both in its efforts to legislate a new Bill of Rights for Federal courts, and in its efforts to allow the States to avoid constitutional standards, which this bill also seeks to do in another section.

Section 3503 is another direct effort to changes the Bill of Rights. It makes eyewitness testimony that a defendant participated in a crime admissible in evidence in any Federal court. The language is designed to reverse the Wade decision, in which the Supreme Court held that a police lineup, in which a defendant is picked by a witness, is a critical stage of a criminal prosecution, and that a suspect is constitutionally entitled to the assistance of counsel at the lineup. Section 3503 seeks to write a statutory limitation upon the sixth amendment, which guarantees that "in all criminal prosecutions, the accused shall have the assistance of counsel for his defense."

Now, there is nothing new about the argument, as old as the Constitution, of who is to say what these guarantees mean. Does Congress decide when the right to counsel begins, or do the Federal courts decide, or does the President decide? There are some constitutional meanings that Congress decides, and there are some the President decides, but when it comes to a justiciable issue, and especially one of personal guarantees or due process of law in court proceedings, it is the courts that decide—not the Congress, not the President.

That issue was settled early in our

constitutional history in Marbury against Madison.

All these sections of which I have spoken are going to run afoul of the case to which I have already referred, Marbury against Madison, that famous constitutional decision by Marshall in 1803.

EFFORT TO WITHDRAW CONSTITUTIONAL RIGHTS BY WITHDRAWING JURISDICTION

It is evident to me that the subsequent sections of title II are a recognition by the majority who reported this bill from the Judiciary Committee that Congress would be unsuccessful in trying to limit by law the guarantees of the Constitution.

So we find in the bill additional sections that withdraw jurisdiction over several of these issues from the Federal courts. I must say that I find these the most repugnant sections of the whole bill. Section 3502 of title II abolishes the jurisdiction of the Supreme Court and other Federal courts to review a State court determination admitting a confession in evidence as voluntarily made. Section 3503 removes the jurisdiction of the Supreme Court and other Federal courts to review either a State or a Federal court determination admitting eyewitness testimony in evidence.

These sections seek to prevent the Supreme Court from acting on State criminal prosecution, just as the provisions I described earlier sought to change the nature of the protection in Federal prosecutions. It is interesting how many of them are aimed at specific stages in the legal process on which the Supreme Court has made recent extensions in the protection of the fifth and sixth amendments. It is certainly rare to find Congress trying to require the admissibility of testimony about a police lineup in which the defendant did not have counsel. In fact, it is incredible. But that is what Congress seeks to do in these provisions. Even if we could do it, I doubt that many Members really desire to intrude so far into the real business of the Federal courts as this measure intrudes.

It makes me wonder if Senators are aware that this bill contains such backdoor—I will even say legislatively underhanded—means of restricting the protection of the Bill of Rights for American citizens.

I say that if there is sufficient disagreement with the interpretation of the Bill of Rights and its application to the everyday procedures of police and courts, let it be proposed that there be a change in the language of the Bill of Rights. Let those who disapprove of the Mallory rule, the Miranda rule, and the Wade rule express their views directly by proposing a new version of the fifth and sixth amendments that will eliminate the requirement of counsel at the lineup and eliminate the necessity for prompt arraignment of an accused person, and permit lengthy and indefinite police interrogation under conditions of isolation or any other conditions they wish to prescribe. Let them introduce and recommend to the Senate a constitutional amendment repealing the fifth and sixth amendments, or altering them in any way they choose.

Long before I came to the Senate, Mr. President, I served in the Criminal Division of the U.S. Department of Justice. While there, I prepared a very detailed research study for the Department of Justice, at the direction of the Attorney General, dealing with police problems, release procedure problems, and prison administration. Before that, I had participated in a series of crime surveys in this country. Out of those experiences, Mr. President, I had an opportunity to learn a great deal about police practices, about third degree tactics and the type of procedures that some police are prone to follow unless they are under proper surveillance at all times.

Many people seem to forget about certain characteristics of prisoners or people who are arrested or detained. A good many tend to be hysterical. A good many are retarded—people who just are not smart mentally—and many are emotionally unbalanced. Interestingly enough, they have those referred to by psychologists as the psychological malingerers. You would be surprised. These, of course, represent a classic type of person who gets a certain abnormal psychological satisfaction out of self-punishment, such as confessing to things that he or she did not do.

They also have the type of person who, for psychological reasons or from emotional motivations, confesses to things to cover up for someone else—a loved one, a brother or sister, parent, son or daughter, or grandson or granddaughter.

Mr. President, if Senators will read the decisions of our courts and the research that goes into these decisions, they will find that the courts are aware of this human behavior problem. We just cannot have the kind of rules of thumb that are set out in parts of this bill, and have the result be justice. And justice is essential; without it, this whole system of government by law will totter and fall.

That is why I say if we want to change the sixth amendment, let us do it by constitutional amendment; let us not propose legislation of the questionable nature which, in my judgment, this legislation is, from the standpoint of constitutionality and sound public policy.

Then let us discuss some of the new versions. That is the way this matter ought to be handled, not by a return to this mechanism of rather odious repute, consisting of withdrawing the jurisdiction of the courts whenever someone in Congress does not like the nature of the court decisions.

Mr. President, I was a very young law dean at the time of the famous, or shall I say notorious court-packing scheme of the thirties. It should surprise no one in the Senate that I not only taught against it, but spoke against it and lectured against it across this country, because in my judgment that was simply another example of weakening the very foundation of government by law—substituting, in that instance with the hope of legislative backing, executive discretion; to have executive discretion, arbitrary and capricious as it may be, become a substitute for the juridical judgment of the men in the robes who have the solemn responsibility of being the trustees and the guardians of this system of constitutional government by law.

I speak out against this bill for somewhat the same reasons. In part, Mr. President, I think it smacks of a court-packing scheme: When you do not like the decision, change the judges. Or when you do not like the decision, withdraw the jurisdiction.

I thought we had disposed of back-door measures of this kind once and for all in 1957, 1958, and 1959, when a spate of them also reached the Senate floor.

HABEAS CORPUS JURISDICTION IN STATE CRIMINAL CASES

I refer, for instance, to section 2256 of S. 917, which abolishes the habeas corpus jurisdiction of the Federal courts over State criminal convictions, except upon appeal or writ of certiorari from the highest State court. We had a bill like this in 1958. I spoke at some length on that bill on August 23, 1958, and I made it clear that I would talk a lot longer if the need arose.

Among the exhibits I offered on that date was a memorandum from the legal counsel to the Industrial Union Department of the AFL–CIO, named Arthur Goldberg—later a justice of the U.S. Supreme Court, and then Ambassador to the United Nations. As I reread the Goldberg memorandum, which I placed in the CONGRESSIONAL RECORD on that date, I find it just as impressive an affirmation of the importance of habeas corpus now—May 2, 1968—as I found it to be in 1958, and just as relevant to the pending bill as it was relevant to H.R. 8361 in 1958.

I read in full the covering letter Mr. Goldberg addressed to chairman Olin Johnston of the Judiciary Committee, enclosing his full memorandum:

> There is pending before your subcommittee, H.R. 8361, a bill recently approved by the House, which is designed to deprive the federal courts of the authority they have exercised for nearly 100 years to determine by writ of habeas corpus whether persons imprisoned pursuant to state proceedings have been denied their constitutional rights.
>
> The undersigned directs your attention to the enclosed memorandum on the pending bill, which demonstrates that there has been no showing of need for elimination of this traditional habeas corpus remedy in the federal courts; that, on the contrary, the existence of the habeas corpus remedy has promoted greater solicitude in state proceedings for observance of constitutional guarantees and on occasion, where those constitutional guarantees have been evaded, has even saved the lives of persons unjustly convicted; and that by eliminating the time-honored habeas corpus remedy, the bill would deny persons imprisoned pursuant to state proceedings any effective hearing in any federal court for the vindication of their federal rights.
>
> If your committee is considering taking any action on the pending bill, we request full public hearings at which we may express our most serious opposition to legislation depriving federal courts of the habeas corpus power which serves as a foremost federal safeguard of the constitutional rights of our citizens.
>
> Sincerely yours,
>
> ARTHUR GOLDBERG,
> *Industrial Union Department, AFL–CIO.*

In his accompanying memorandum, Mr. Goldberg describes cases in which men in State prisons who had been unable to obtain consideration of their

cases at the State level were able to do so through the habeas corpus proceeding in the Federal courts. Under this legislation, too, we would abolish that right, except upon appeal from or writ of certiorari granted to review a determination made by the highest court of the State.

As nearly as I can make out, the language in section 2256 of the committee bill would effectively restrict review of State criminal cases to the route of appeal or certiorari from the highest State court. We all know that for all practical purposes, this provision would restrict all such review to the Supreme Court of the United States by effectively preventing lower Federal courts from considering State cases through the habeas corpus procedure.

It was the Supreme Court itself that said, as quoted in the Goldberg memorandum:

> The uniqueness of habeas corpus in the procedural armory of our law cannot be too often emphasized. It differs from all other remedies in that it is available to bring into question the legality of a person's restraint, and to require justification for such detention. It is not the boasting of empty rhetoric that has treated the writ of habeas corpus as the basic safeguard of freedom in the Anglo-American world. The great writ of habeas corpus has been for centuries esteemed the best and only sufficient defense of personal freedom.

Under section 2256 of the bill, we are asked to deny Federal use of this same tool to individuals convicted in State courts. I call that a retrogression of jurisprudence and a turning back of the clock of legal process and progress.

Do Senators know that among many lawyers in the Anglo-Saxon world, including many American lawyers, there is an effort being made to internationalize the habeas corpus principle? It is being suggested that one of the human rights that should be established by the United Nations for all the world's people is the right of habeas corpus; no matter what country, no matter what juridical system is in effect, this legal protection that the Supreme Court rightly calls "the best and only sufficient defense of personal freedom" should be available to all human beings everywhere.

At least, we should not retrogress. We should not retreat to limiting its application by the Federal courts in this day of great crises. I repeat again, and throughout my speech this afternoon I shall repeat, that it is when a country reaches a great crisis that it is more important than ever that all of its constitutional guarantees remain inviolate so that people can remain free.

We must not let the crises of the times cause us to adopt police state tactics. We have mob law, whether we have it by insurrectionists who must be brought within the framework of the law or whether we have it by way of police state tactics. Both groups can—and do—practice mob law. There is no place for mobsters in this country who seek to impose upon us mob law, whether they are civilians or police officers, civilians or politicians, or civilians or representatives of the executive branch of the Government.

The greatest guarantee of our freedom is that we shall see to it that there shall remain inviolate our system of government based upon three coordinate and coequal branches of the Government, with each branch having a check on the other two—the legislative, the executive, and the judiciary.

One of the great checks that, in my judgment, the pending bill would undermine and weaken is the check of the judiciary finally speaking out in regard to the constitutional rights of the American people.

As a lawyer, as a teacher, as a Senator, and as a citizen, I do not intend to leave a record when I come to vote on the pending bill that undermines that precious check that the Constitution gives to the U.S. Supreme Court.

Unless my colleagues understand not only this thesis of my views on the pending bill, but also my legal philosophy that I have held throughout my professional career, I recognize that they cannot understand my reasons for opposing the bill.

Certainly there is no legal doctrine that is more needed in Communist countries or in military junta governments or in any other form of totalitarian governments than the doctrine of habeas corpus. The demand that a police state show cause why a man should be detained or else release him would do more to undermine the police states of the Communist world than anything else that could be devised that I can think of—economic, political, or military.

To make it possible through habeas corpus for a man to have his freedom and liberty restored is to strike a body blow procedurally against the perpetuation of totalitarianism in any of its ugly forms.

Every time Rumania or Czechoslovakia or some similar Communist state changes hands enough to reveal the crimes of the recent past, I reflect again upon their lack of juridical processes that can protect the personal liberty of the innocent and the legal rights of innocent and guilty alike.

What shame and despotism these countries could have avoided, had their judicial systems provided for the habeas corpus proceeding. I mean, provided for it in reality—in practice—in the specific cases where it was needed—and not just on paper.

Through legislation such as this we are on the way to reducing our own right of habeas corpus to a theoretical but not a practical right.

Let me point out, moreover, that once we deny the Federal habeas corpus proceeding in State cases, then on top of that deny to the Supreme Court the power to consider issues of a defendant being picked out of a lineup without counsel being present, and deny the power to consider the voluntariness of confessions in these State cases, the rights of American citizens, too, have been greatly reduced toward the level of theoretical rights.

Is the writ abused? Is it sought and used indiscriminately to get around State court proceedings? I call the attention of the Senate again to the material in the minority views and used in the Extensions of Remarks in the Senate on April 25 by the Senator from Maryland [Mr. TYDINGS]:

> In *Townsend* v. *Sain* (372 U.S. 293 (1963)) the Supreme Court held unequivocally that State court findings of fact, arrived at after full and fair hearings, must be accepted by the Federal courts. A Federal habeas corpus hearing is not available merely because a state prisoner has been convicted of a serious offense. . . . Under the specific doctrine of Townsend against Sain, Federal habeas corpus is available only when the state trier of fact has not afforded the habeas applicant a full and fair hearing.

I believe it is reasonable to ask proponents of this bill why they want to deny the Federal writ when it is available, anyway, only where the State court can be shown not to have allowed a full and fair hearing.

Why, indeed?

I submit, Mr. President (Mr. BURDICK in the chair), that, if our Bill of Rights is to be meaningful, remedies must be afforded to secure its protections in specific instances where such protections are needed. We do not need paper rights. I hope the Senate will reject the many sections of S. 917 that reduce the Bill of Rights to paper rights.

WIRETAP SECTIONS

The best short description I can give of the wiretap section of the bill is that it is the practical legalization of electronic spying at all levels of government. This does not deal with authorized wiretapping by Federal agents for national security cases, or Presidential assassinations, or the other heinous crimes for which an effort has been made in recent years to legalize wiretapping. Read the summary of the uses for which it is legalized at the Federal level:

> Espionage, sabotage, treason, murder, kidnaping, robbery, extortion, counterfeiting, bribery, sports bribery, gambling, bankruptcy fraud, narcotics, marijuana, dangerous drugs, obstruction of justice, presidential assassination, assault, labor racketeering, labor embezzlement, interstate transportation in aid of racketeering, interstate transportation of stolen property, and conspiracy to commit any of the foregoing offenses.

For any of these situations, an Assistant Attorney General may seek from a Federal judge authority not only to put a wiretap on a telephone to intercept telephone conversations, but also to intercept what the bill calls "oral communications" as distinguished from "wire communications." That means bugging, even from a long distance away. Do not forget that in this field there is no selectivity. The tapper hears all. The tapper destroys all privacy. The tapper gains information that can be used for a variety of purposes, good and bad. The entire procedure is bad, for reasons that I shall amplify later.

I only wish to point out that when we accept the language of this bill, the precious right of privacy, the precious right to be protected from this type of intervention, which amounts to an unfair "search and seizure"—I put it in quotation marks, but it is analogous—it strikes a serious blow, in my judgment, in the protecting of the civil liberties of free men and women.

Section 2510 defines "wire communications" as "any communication made

in whole or in part through the use of facilities for the transmissions of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception furnished or operated by any person engaged as a common carrier in providing or operating such facilities for the transmission of interstate or foreign communications."

The section goes on to define "oral communication" as "any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under cirstances justifying such expectations."

This is not simply what we used to call a wiretap provision. It is a title that authorizes electronic surveillance, in which wiretapping of telephones is only a small part.

It authorizes this surveillance at the Federal level in such cases, for example, as stolen cars, or conspiracy to move stolen cars across State lines.

But that is only the beginning. The bill authorizes the same kind of surveillance by State and local law agencies, upon enactment of corresponding State law to authorize the same thing. This bill extends the authority to "the principal prosecuting attorney of any State, or the principal prosecuting attorney of any political subdivision thereof, if such attorney is authorized by a statute of that State to make application to a State court judge or competent jurisdiction for an order authorizing or approving the interception of wire or oral communications."

There is no Federal control here by Federal judges. Under this language every State and every local prosecuting attorney is freed to use bugging devices and procedures in a whole series of crimes enumerated, including "other crime dangerous to life, limb, or property, and punishable by imprisonment for more than 1 year."

Another section authorizes the use and disclosure of the information so obtained in court.

Moreover, it authorizes the information so obtained to be disclosed by one law enforcement officer to another, largely within his discretion, for the bill says only that it shall be in connection with "official duties."

I can only say of this proposed legislation, Mr. President, that it leaves me aghast. It is the open and clear invitation to a virtually universal bugging and electronic spying upon the American people by Federal, State, and municipal police. Although the section purports to put a 30-day limitation upon the bugging of any individual, that, too, is riddled with holes. The biggest one is paragraph 7 of section 2518, which provides that "notwithstanding any other provision of this chapter, any investigative or law enforcement officer who reasonably determines that an emergency situation exists that requires a wire or oral communication to be intercepted before an order authorizing such interception can with due diligence be obtained, and there are grounds upon which an order could be entered under this chapter to authorize such interception, may intercept such wire or oral communication" for 48 hours without an order. That is his discretion. It is up to his judgment.

The present occupant of the chair [Mr. BURDICK] is a great lawyer. Does he believe there would be much of a chance—avoiding for a moment reference to constitutionality, but assuming it for a moment—to set aside in court the exercise of such judgment on the part of such a law-enforcement officer, on the ground that it violates the legal test that the discretion must be exercised without arbitrary discretion and caprice? Of course not. The list of cases dealing with the difficulties of showing exercise of arbitrary and capricious discretion is longer than my arm.

Next, the bill calls for the contents of any of these intercepts to be recorded on a tape recording "in such a way as will protect the recording from editing or other alterations." It is then to be "made available" to the judge who issued the order, presumably for safekeeping, although if it is only "made available" it is hard to see what protection that is going to afford the individual whose conversations have been surreptitiously tape recorded.

> Duplicate recordings may be made for use or disclosure pursuant to the provisions of subsections (1) and (2) of this chapter for investigations.

The most intimate of conversations can be and are recorded; conversations between husband and wife, between lover and sweetheart, between the closest of personal relationships, and between any human beings. Many evils would flow from it. It is full of blackmail possibilities.

Mr. President, you are dealing with basic human rights in this matter; you are dealing with the most precious possessions free men and women can have. That is one of the reasons I think it is such a bad bill.

THRUST OF BUGGING AUTHORITY GOES TO STATES, NOT FEDERAL LAW ENFORCEMENT

Mr. President, were there any testimony whatever from the Department of Justice showing need for this wiretap and electronic surveillance authority for the broad spectrum of criminal activity, one would have to give serious consideration to the need for it as against the invasion of privacy which it constitutes.

But the testimony of the Attorney General is exactly to the contrary. Attorney General Clark testified on March 20, 1967, to the Administrative Practice and Procedure Subcommittee of the Judiciary Committee as follows:

> We cared enough for our privacy to prohibit unreasonable searches and seizures and unrestricted warrants in the Bill of Rights. For privacy is after all the foundation of freedom and the source of individualism and personality. But as Justice Brandeis observed nearly four decades ago . . . "general warrants are but puny instruments of tyranny and oppression when compared to wiretapping". Still, we permit the most insidious invasion of privacy—the electronic surveillance.

Quoting again from the same testimony by the Attorney General:

> Public safety will not be found in wiretapping. Security is to be found in excellence in law enforcement, in courts and in corrections. That excellence has not been found to include wiretapping.
>
> Nothing so mocks privacy as the wiretap and the electronic surveillance. They are incompatible with a free society and justified only when that society must protect itself from those who seek to destroy it.

I applaud the Attorney General. This has been his consistent position on the issue of wiretapping.

Did the Attorney General ask for this authority, or deem it essential to the operation of the Department of Justice? Quite the contrary:

> Only the most urgent need can justify wiretapping and other electronic surveillance, he said. Proponents of authorization have failed to make a case—much less meet the heavy burden of proof our values require. Where is the evidence that this is an efficient police technique? Might not more crime be prevented and detected by other uses of the same manpower without the large scale, unfocussed intrusions on personal privacy that electronic surveillance involve?

Far from seeking more authority to use these techniques, the Attorney General testified in support of legislation to restrict it, not provide for it.

Mr. President, if the physical invasion of homes in 1775 was enough to cause the Founding Fathers to prohibit unwarranted searches and seizures then, surely we are not ready now to surrender to the total invasion of our homes through the electronic spying authorized in this bill.

I know that elaborate efforts are made to distinguish between a real wiretap, or bug, which requires someone to intrude upon private premises to install. That kind of invasion is truly a search, requiring a warrant under conditions set forth in article 4. But electronic surveillance, whereby conversations can be picked up from scores of feet away, without any physical intrusion upon the premises involved, is a far more insidious invasion of privacy, and one which I do not believe should be tolerated at all.

Least of all should the Congress be opening the door wide to the extensive use of eavesdropping devices without showing that they are vital to law enforcement. The Attorney General denies that they are. Undoubtedly, they are an easy shortcut for many local agencies, and I surmise that this is the reason for the pending language in the legislation.

At least, some people think they are a shortcut to law enforcement. Not all the testimony is to that effect. In fact, there is a good deal of opinion among law enforcement agencies that a great deal of time is wasted on electronic surveillance that could be used to better advantage.

CONSTITUTIONAL OBJECTIONS TO EAVESDROPPING

Basically, I submit, all these proposals, as well as what is already authorized in Federal law, runs afoul of the fourth amendment restriction upon "unreasonable searches and seizures."

First, no request for a warrant to eavesdrop can truly specify in advance the "person or things to be seized" as stipulated in the fourth amendment.

In some cases, there has been a showing that only the desired conversations were overheard and that when a party not connected with the case used the telephone being tapped, the officer did

not listen. But there are far more instances of eavesdropping overhearing conversations—and sometimes using or repeating them—having nothing to do with a matter under investigation.

Electronic eavesdropping of any kind has rightly been called an electronic dragnet. I think this is borne out by the fact some proponents of it point to cases where information has been uncovered inadvertently that led to the solution of a case not connected in any way with the purpose of the surveillance.

Second, I submit that the history of the fourth amendment searches and seizures has been that a valid search warrant requires the search to be conducted for articles involved in the commission of the crime, fruits of the crime, contraband, or item on which duties should have been paid. As pointed out by the American Civil Liberties Union, these requirements are reflected in rule 41(b) of the Federal Rules of Criminal Procedure.

Wiretap and surveillance measures, on the other hand, seek permission to search for evidentiary matter—pieces of evidence to assist in prosecution and conviction. In 1960, the Supreme Court held that "private papers desired by the Government merely for use as evidence may not be seized, no matter how lawful the search that discovers them." Abel against United States, 1960.

That the electronic devices are used for obtaining "evidence" is unquestionable, for the courts have so referred to it.

I may say that I personally concur heartily with the view expressed by Justice Brennan in 1963 that whether they use trespass or any other means of surveillance, all such devices should be considered under the conditions imposed by the fourth amendment. I think they are subject, also, to the fifth amendment protection against self-incrimination and the sixth amendment guarantee to right to counsel, depending on the stage at which they are used. The use of secret eavesdropping in the law enforcement process cuts across not just one, but many of our personal freedoms. The Supreme Court has scarcely begun to explore the ominous implications of electronic spying upon law enforcement and the personal liberties protected by the various amendments in the Bill of Rights.

Suffice it to summarize my own view by saying I think the fourth amendment, as interpreted and applied to searches for articles, should at least be applied to searches for verbal evidence, conducted by these electronic devices. There is so much evidence as to the lack of selectivity in this kind of search that it ought to be banned altogether under the fourth amendment.

Yet we are confronted here with a cascade of wiretapping and eavesdropping by county deputies, municipal police, as well as Federal agents, for crimes with penalties of as little as 1 year in jail and for 48 hours before a court order is so much as sought.

The invasion of personal privacy this bill allows is the most shocking and damaging piece of legislation I can remember being presented to the Senate. It goes further and is more threatening to personal privacy than any other mere wiretap proposal I can recall, and I have fought them all here in the Senate.

I hope that the Senate will recover its judgment and reject titles II and III of this bill.

GUN CONTROL SECTIONS

Still another title in the bill in which I think the Senate is walking on thin constitutional ice is that dealing with gun controls. I am one Member of the Senate who had no strong opinions on this matter, largely because the availability of weapons to those who wanted them seems to be unaffected by banning mail-order sales. Yet I recognize that the purpose of the ban was to protect State and municipal laws that require registration or prohibit the purchase of guns by certain people.

Yet here, too, the Supreme Court has just recently ruled on gun registration in such a way that casts serious doubt upon these State and local registration laws. Its January decision in Hayes against United States, seems, at least, to make self-incrimination a defense against failure to register a gun, or possession of an unregistered gun. If so, then the State and local laws that the mail-order ban seeks to protect are rather meaningless.

Unquestionably, there will have to be further litigation of State laws to determine whether the Supreme Court did mean to strike down registration per se as a violation of the fifth amendment. But those of us who had assumed that because the Court did not find registration a limitation upon the right to bear arms that, therefore, we were free to proceed in this area, now must reconsider the usefulness of banning mail-order sales.

Certainly we can ban mail-order sales under the commerce clause. But the question of its effectiveness is something else. It appears to me that a ban on mail-order sales would soon affect no one but the legitimate purchaser, if the various State or municipal registration laws are successfully challenged in court.

Here again, I think the effectiveness of legislation on mail order sale of guns is vastly overrated as a means of curtailing the use of guns in the commission of crimes.

I speak respectfully, but as I have listened to the discussion on the subject now for many months—and over the past several years—I have moved further and further away from gun-banning legislation. As of now, I would not vote for any of it. I believe that there are too many legal questions which need to be cleared up. There is also the question of personal liberty involved here.

We are rushing into a field of personal liberty protected by the Constitution where the rights of individuals to own weapons are still undefined by the courts. It is true that there are other types of local gun control laws that do not appear to be subject to the same challenges that registration is subject to. But are they sufficiently important to deny the mail order privilege to the citizens of many States that do not have any gun controls at all?

I very much regret that title IV, title III, and title II have been brought into the debate on what began as a clearly limited program of Federal assistance to State and local law-enforcement agencies. We are being asked in these titles to swim in a sea of murky law and much murkier effectiveness in combating crime. I certainly shall not help make title IV worse by adding rifles and shotguns to it.

In regard to this matter of personal liberty, there is no question about the fact that there are millions of Americans across this land who believe they have a personal right to own guns and that their ownership of guns should not be subject to surveillance by the Government.

After all, there is a basic philosophy involved here, too. Many do not share that philosophy; but, nevertheless, the feeling is that they have a right to own guns without the surveillance of the Government for their own protection, for their own use, for lawful purposes.

Mr. President, there is also a growing fear in this country as to what road we are heading down. There is a growing feeling that the Government should not dictate to them what weapons of self-protection they can possess. I am inclined to believe that there will be stronger confidence in a government on the part of these missions of people, if an attempt to invade this area of privacy and personal liberty is not made.

We can be sure that Americans, as long as they remain Americans, will insist on the right to defend themselves against tyranny, whether it is tyranny sought to be practiced upon them by insurrectionists, whether it is tyranny which is sought to be practiced upon them by a mob, or whether it is the tyranny of a government that has become tyrannical.

I pray to my God that no American will ever live to see our Government become tyrannical.

We all know the unanswerable tenet of Thomas Jefferson, one put into application which gave birth to our Republic; namely, the basic right of free men to revolt. Our Constitutional Fathers used their weapons to resist tyranny.

I do not share the fear of many that they may need weapons to put down tyranny. But there is no answer to their right to follow a course of action in respect to their personal liberties to possess weapons, and to put down tyranny if it should arise.

Mr. President, this is the first of a series of speeches that I shall probably make from time to time on this subject, because I do not know in all my years of service in the Senate of a bill that would undermine more the preservation and perpetuation of the liberties and freedoms of the American people. If these arbitrary powers are turned over to men and given the right to exercise what would amount to capricious and arbitrary discretion, then, in my judgment, great damage will be done to the health of the body politic of this Republic.

Furthermore, as I have stated in my speech, I think that the bill is honeycombed with unconstitutionality. Therefore, I consider it my duty to continue, from time to time, to make my record in opposition to the bill.

Mr. McCLELLAN. Mr. President, I merely rise to compliment the distin-

guished Senator from Oregon, most sincerely, upon the able presentation he has made of his viewpoint. I share with him what I know must be a measure of disappointment that he has presented his eloquent appeal for his position to empty seats, as I did yesterday when I tried to present the affirmative side of this bill and arguments in support of it.

While I may agree with some conclusions the Senator reached, particularly when he referred to this measure as one of the most important measures that has been before this body in a long time, because we agree as to what makes it important, I truly believe that the real destiny with respect to whether or not we will have law and order and law enforcement in this country may well turn upon the disposition of this bill, and particularly some important aspects of it.

For that reason, I observe that the distinguished Senator said he expected to speak on the bill from time to time. I assume by that that we are to have lengthy debate. Since that is to be the course we must follow, I do not feel it incumbent upon me as manager of the bill to answer each speech which is made or to attempt to do so; but, in due course, as the debate proceeds, we will reply to some of the arguments made in opposition to the provisions of the bill.

Other Members of this body are the primary authors or sponsors of different sections or titles of the bill. Therefore, I suppose they will assume the primary burden of speaking in opposition to the arguments against them and in advocacy of the features of the bill which they have offered and are sponsoring.

Mr. President, as I have said, from time to time we will answer attacks made on the bill, in an endeavor to demonstrate the urgency of its enactment and the necessity, at this critical period in American history, in this time of crisis, for us to act, and to act affirmatively, to take positive action, to do something about it.

Yes, there is a crisis; but, Mr. President, the crisis did not arise by reason of the quality of law enforcement we had under the old interpretation of the Constitution, as the Constitution was interpreted down to these late 5-to-4 decisions. We had better law and order; we had better observance up to that time. It is the liberalization of the meaning of the Constitution today that is giving encouragement and a measure of protection to the law violator. That is what we undertake to change by some of the provisions of the bill. We attempt to go back to the law and the Constitution as they were before the Court undertook to liberalize them to the point that today it is becoming almost a rule of the Court that it find some technicality to release back on society, habitual, confirmed, and confessed criminals.

That is what we hope we may find the Congress has the power to curb. We may not succeed, but we are going to make the most sincere, dedicated, and consistent effort that our strength, intellect, and minds will permit us to make.

Mr. President, I ask unanimous consent to insert in the RECORD at this point—and these deal with problems related to crime in America today and what is causing it—an article that appeared in today's Washington Evening Star, by James J. Kilpatrick, entitled "Permissiveness Gone Mad in the Universities," and an editorial which appeared in today's Philadelphia Inquirer, which is directly related to this problem, entitled "Fighting Crime and Injustice."

There being no objection, the article and editorial were ordered to be printed in the RECORD, as follows:

[From the Washington (D.C.) Evening Star, May 2, 1968]

PERMISSIVENESS GONE MAD IN THE UNIVERSITIES

(By James J. Kilpatrick)

NEW YORK.—The trustees of Columbia University were ten days late in calling in the cops. By their spineless unwillingness to act at the very outset of the insurrection, they made their own miserable contribution to the anarchy that is spreading a typhus contagion across American campuses this spring.

The student revolutionaries should have been warned, then arrested, then expelled, at their first defiance of university rules. Instead, the administration vacillated. It was willing to negotiate; it would treat with the invaders; it would suspend construction of a controversial gymnasium as a gesture of appeasement. This was foam-rubber firmness and no wonder the students hooted the trustees down.

What in the name of heaven has happened to our college and university administrations? The series of outrages began at Howard University in Washington on March 19, when student insurrectionists seized the administration building and held it for five days.

Thus inspired, students at Bowie State University in Maryland went on a similar rampage; they blocked driveways, seized the university switchboard, banned President Samuel L. Myers from the grounds, and began deliberately wasting water and electricity. Someone had taught them, presumably, that this was free speech.

The contagion spead to Virginia Union University in Richmond; to Virginia State College in Petersburg; on April 7 to Tuskegee Institute in Alabama, where students chained the doors of an administration building and kept trustees captive for 13 hours. In other manifestations, student insurrection hit Colgate, Western Michigan, the University of Georgia, Long Island College.

At Barnard College in Manhattan, the administration groped abjectly with the problem of young Linda LeClair, a student who had lied—lied brazenly and willfully—in order to deceive the college as to her place of residence. The case caused serious embarrassment to Barnard. Linda had to be punished; the college denied her access to the snack bar.

Here and there, it is true, a few public officials have reacted with firmness. Maryland's Gov. Spiro Agnew closed Bowie State. The Tuskegee trustees moved decisively against offenders. Generally, the pattern has been a pattern of administrative surrender. It has been a pattern of permissiveness gone mad, of tolerance turned inside out. In the process, the whole meaning of a university has been lost.

If a university fails to maintain conditions of free inquiry, it fails in its primary function. But freedom demands order. It demands discipline. It demands a sense of hierarchy, in which the students are inferior to their masters. What kind of free inquiry was possible at Columbia with the insurrectionists in charge? The zoo has been surrendered to the gibbons, the asylum yielded to the inmates. Students who wanted to pursue their education were effectively prevented from doing so. This was an exercise in healthy dissent? In free speech? In peaceable assembly and petition? Nonsense. This was anarchy; it cannot be condoned.

An explanation may be sought, perhaps, in the perverted emphasis our society has placed upon "youth" and upon "equality." In our fatuous exaltation of the immature, we have tended to destroy the meaning of maturity. The notion that students are somehow equal to professors has undermined the whole of the academic relationship.

This is a case, if there ever were one, of "teaching bloody instructions, which, being taught, return to plague the inventor." The college administrators who have condoned, capitulated, and made concessions to student insubordination have asked for the chains on their doors. The trustees' decision to build this Columbia gym was not reached capriciously; it was the result of prolonged and serious deliberation. To suspend that decision in deference to the militants is to invite attack on other university policies. It is to destroy order and to abdicate responsibility. No institution, so governed, deserves to survive.

[From the Philadelphia Enquirer, May 2, 1968]

FIGHTING CRIME AND INJUSTICE

Philadelphia Police Commissioner Frank Rizzo has made a strong case for State-wide riot control legislation, including restrictions on the storage and transportation of firearms and explosives, in testimony before the Senate Judiciary Committee in Harrisburg.

Even though Philadelphia has ordinances along this line already on the law books, they are of limited value if persons plotting trouble in the city can establish their arsenals of weapons in suburban counties, just outside the city limits, where they can be immediately available when an occasion arises.

Commissioner Rizzo reached the nub of the issue when he told the Judiciary Committee: "We must have laws in order to enforce laws, and these are preventive. We are putting as much emphasis on prevention as on enforcement."

Senator Clarence D. Bell, the committee chairman, served the public interest in inviting Mr. Rizzo to testify. As a legislator from Delaware county, Senator Bell is in a position to know first-hand the need for urban, suburban and rural cooperation on crime-prevention measures and should take the lead in pushing for enactment of the riot-control bills by the Legislature.

By appropriate coincidence, Commissioner Rizzo is beginning his second quarter-century of service as a law-enforcement officer in Philadelphia and was honored at the Police Athletic League's 20th anniversary dinner in this city a few hours after his testimony to the Senate committee in Harrisburg.

In an address at the dinner he made a number of timely comments on the war against crime.

Urging news media to expand their coverage of crime, instead of sharply curtailing such coverage as advocated in some quarters, Commissioner Rizzo emphasized the need for greater public awareness and concern about problems of lawlessness and disorder and violence.

U.S. District Court Judge A. Leon Higginbotham, Jr., also speaking at the PAL dinner, warned of the need not only to combat crime but to remedy injustices.

Wars against crime and injustice are inseparable.

Philadelphia police, in the performance of their duty and in community service projects beyond the call of duty, as exemplified in the Police Athletic League, are doing law-enforcement and crime-prevention work worthy of vigorous public support. They also deserve cooperation from the Legislature through prompt enactment of bills such as those indorsed in the testimony of Commissioner Rizzo.

PRIVILEGE OF THE FLOOR

Mr. McCLELLAN. Mr. President, at the request of the distinguished Senator from Pennsylvania [Mr. SCOTT], I ask

unanimous consent that the privilege of the floor be given to Mr. Barton Hertzbach, of the staff of the Subcommittee on Improvement in Judicial Machinery, during consideration of S. 917. I make that request at the instance of the distinguished Senator from Pennsylvania.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONSERVATION OF OUR FISH AND GAME

Mr. FANNIN. Mr. President, on March 21, 1968, I introduced a bill confirming the authority of the States to control, regulate, and manage fish and wildlife within their territorial boundaries.

At this time I would like to explain its purpose. This proposed legislation would end the Federal-State dispute over the ownership of fish and wildlife on Federal lands and, with certain exceptions, reaffirm the States' ownership of these resident species. My bill restates the established law that Federal ownership of land does not carry with it Federal ownership of the resident species of fish and game on that land.

Not in issue here and therefore exempted from the bill are first, hunting and fishing rights of Indians and Alaskan natives protected under treaty or Federal statute; second, the authority of the Federal Government to control and regulate fish and wildlife under treaty or on lands to which a State has ceded exclusive jurisdiction; or, third, the right of the Federal Government under article IV, section 3, clause 2 of the U.S. Constitution to protect its lands from damage by wildlife. Nor will my bill infringe upon existing Federal laws, such as the Rare and Endangered Species Act and the Bald Eagle Act, enacted for the protection of certain species of wildlife. My bill in no way dilutes the authority of the Federal Government to restrict or prohibit hunting and fishing on its lands in the interest of public safety or protection of its property.

This bill does meet, however, a very specific issue. The Federal Government, through the Department of the Interior, is claiming ownership of all resident species of fish and wildlife found on Federal lands. This assertion is without constitutional authority and defies the long precedent of the U.S. Supreme Court, other Federal and State court decisions which clearly establishes that resident species of fish and wildlife located within the boundaries of a State, whether on Federal, State, or private land, are owned by that respective State in trust for its citizens. The legal arguments are presented in two briefs submitted by the International Association of Game, Fish, and Conservation Commissioners and the Solicitor of the Department of the Interior, copies of which I ask unanimous consent to have printed in the RECORD following my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. FANNIN. Essentially, the Solicitor argues that the Federal Government possesses unquestioned jurisdiction over resident fish and wildlife by virtue of the property and supremacy clauses of the U.S. Constitution and that any Federal rules and regulations promulgated in exercise of this alleged jurisdiction are subject only to the test of reasonableness and appropriateness. The flaw in this analysis is the lack of constitutional authority to claim ownership of resident species of fish and game just because they happen to be located on Federal lands. It is elemental constitutional law that Federal authority over anything arises only from enumerated powers in the Constitution. And although from time to time the extent of those powers has been given elastic proportions by the U.S. Supreme Court, the property clause in the Constitution has never and cannot now be so stretched by a department of the Federal Government.

It is true that the property clause does empower the Federal Government to control, and in fact eradicate, wildlife when these species are damaging or destroying Federal land. The U.S. Supreme Court so held in *U.S.* v. *Hunt* (278 U.S. 96, (1928)). To that extent, but, I emphasize, to that extent only, the Federal Government can exercise control over resident species of fish and wildlife. Protection of Federal property is one thing but the claim of Federal ownership and control over all game just because they happen to be found on Federal lands is an entirely different question.

The authority of the States in this field has been clearly defined throughout the years since initially spelled out by the U.S. Supreme Court in 1896. *Geer* v. *Conn* (161, U.S. 519).

Congress did attempt to assume control over migratory waterfowl early in this century but the statute was struck down by the Federal courts as an unconstitutional exercise of Federal power. *U.S.* v. *Shauver* (214 Fed. Rep. 154); and *U.S.* v. *McCullagh* (2211 Fed. Rep. 288). Only after consummation of a treaty between the United States and Great Britain was Congress empowered to so legislate, and a careful reading of Justice Holmes decision in the case of *Missouri* v. *Holland* (252 U.S. 416), which upheld this later Migratory Bird Treaty Act, evidences that absent the treaty the statute would have lacked constitutional life.

I do not wish, however, to leave the impression that this is merely a legal dispute. It is much more. For unless Congress acts to pass this bill, we will see the demise of many State wildlife conservation programs, the possible establishment of a Federal hunting and fishing license, and the senseless fracturing of uniform fish and game management within the borders of each State. If the Interior's position is permitted to stand, it is not hard to imagine what would happen, for example, in the State of Arizona, where over 70 percent of our land is in some form of Federal ownership or control. The sound conservation practices of Arizona's Game and Fish Department could well be eviscerated and replaced by a myriad of different hunting and fishing regulations issued by the Department of Agriculture, the National Park Service, the Bureau of Land Management, the Bureau of Sport Fisheries, the U.S. Air Force, the U.S. Army, or any other Federal department, agency, or bureau encouraged by Interior's position to assume like powers.

Mr. President, the wise management of fish and game, particularly within those States with large Federal land holdings, depends on cooperation, not competition, between the State and Federal Governments. Over the years, the States, through their fine International Association of Game, Fish, and Conservation Commissioners, have tried unsuccessfully to reach accord with the Department of the Interior. The obstacle has been the Solicitor's opinion of 1964 and the rigid insistence of the Department of the Interior on the validity of that wide-ranging opinion.

Relying on that opinion, the Department of the Interior has now acted to enforce it. In December of last year, the Superintendent of Carlsbad National Park, N. Mex., initiated a program in the park to kill some 50 deer over a 2-year period in order to study the contents of their stomachs. The Park Service admitted the deer were not posing a present threat to the park lands, and that the purpose of the killings was to gather information for future studies. The State of New Mexico requested that in accordance with New Mexico law all personnel involved in the killing of these deer acquire the necessary State permit. The Park Service refused, claiming that this was a Federal project on Federal lands and therefore not subject to State law. The State of New Mexico filed suit in Federal district court to enjoin the Park Service, who by then had killed 15 deer in violation of State law. On March 12, 1968, the court enjoined the defendants from further killing of deer for the purpose of conducting the research study.

This decision, even if affirmed on appeal, however, cannot settle the overall dispute between the State and Federal Governments, for the trial judge decided the case on the narrow grounds of statutory construction, thereby avoiding the substantive question of constitutional authority. The text of the court's opinion will follow my remarks.

The proposed legislation I have introduced is in no way a criticism of those conservationists and wildlife biologists working for the Bureau of Sport Fisheries and Wildlife. Their efforts within the proper limits of Federal responsibility, particularly the preservation and propogation of endangered species and migratory waterfowl, mirror the dedication of our contemporary wildlife conservationists.

But the actions of the National Park Service in New Mexico should leave little doubt about the consequences of permitting this dispute to continue. At stake here is an irreplaceable resource, threatened by administrative flexing of the Federal Government. The bill I have introduced will put an end to this controversy and permit the States to continue their fine efforts toward uniform fish and game conservation.

I urge the support of my colleagues for this bill.

Mr. President, I express my thanks and appreciation to the distinguished Senator from South Carolina for permitting me to present this statement at this time.

EXHIBIT 1

BRIEF OF THE LEGAL COMMITTEE, INTERNATIONAL ASSOCIATION OF GAME, FISH AND CONSERVATION COMMISSIONERS IN OPPOSITION TO MEMORANDUM OPINION NO. 36672 ISSUED BY SOLICITOR FOR THE DEPARTMENT OF THE INTERIOR

Re: Authority of the Secretary of the Interior to manage and control resident species of wildlife which inhabit wildlife refuges, game ranges, wildlife ranges, and other Federally-owned property under the administration of the Secretary.

1. STATEMENT OF QUESTION INVOLVED

The Solicitor for the United States Department of the Interior has recently issued an opinion on the subject of "authority of the Secretary of Interior to manage and control resident species of wildlife which inhabit wildlife refuges, game ranges, wildlife ranges, and other Federally-owned property under the administration of the Secretary."

The specific question asked by the United States Fish and Wildlife Service is:

"Does the Secretary of the Interior have the *authority to promulgate regulations which control the hunting and fishing activities of the general public on land within the refuge system,* when such regulations are more restrictive than State fish and game laws?"

This question, as submitted to the Solicitor, grew out of the position taken by various State fish and game departments and the ad hoc committee of the International Association of Game, Fish and Conservation Commissioners. As set forth in the Solicitor's opinion, this position is:

"That the Secretary may issue *only* hunting and fishing regulations for resident species of wildlife that incorporate completely State law, because all resident species of wildlife, other than migratory birds, are subject to the *exclusive* jurisdiction and control of the several States, and the States have some semblance of title to the resident species of wildlife."

The Solicitor affirmatively answered the specific question asked by the United States Fish and Wildlife Service, and concluded:

"It is our conclusion that the Secretary has ample legal authority to make hunting and fishing regulations for particular areas within the National Wildlife Refuge System that prohibit activities authorized and permitted by State law. The regulation of the wildlife populations on Federally-owned land is an appropriate and necessary function of the Federal government when the regulations are designed to protect and conserve the wildlife as well as the land."

But the most ominous contention made by the Solicitor is to be found in the following all-inclusive statement (page 5) of his opinion:

"From the foregoing authorities it is apparent that the United States constitutionally empowered as it is, may gain a proprietary interest in land within a State and, in the exercise of this proprietary interest, has constitutional power to enact laws and regulations controlling and protecting that land, including the persons, inanimate articles of value, and resident species of wildlife situated on such land, and that this authority is superior to that of a State."

It is the considered opinion of the legal committee of the International Association of Game, Fish and Conservation Commissioners that the Solicitor's opinion is erroneous.

II. EFFECT OF SOLICITOR'S OPINION ON STATES' CONSERVATION PROGRAMS

If the opinion of the Solicitor prevails, the States will suffer serious consequences with respect to their conservation programs. A tabulation annexed hereto indicates the extensive ownership of lands by the Federal government within the States. If the courts uphold the sweeping contention made in the Solicitor's opinion, the States would lose their regulatory power over resident game and fish on Federally-owned lands within their jurisdiction and also a considerable revenue derived from licenses since such licensing power would be displaced by Federal licensing structure as a result.

III. HISTORICAL DOCTRINE—STATE OWNERSHIP OF GAME AND FISH

The historical doctrine of ownership of game and fish by the several States is still basically the law of the land, as decided in *Geer* v. *Connecticut,* 161 U.S. 519 (1896).

It must be conceded in this day that whatever doubts may have existed as to the ownership of game and fish by the several States, that doubt was finally put at rest by the United States Supreme Court decision in the *Geer* case. The issue here was whether a statute passed by the Connecticut legislature prohibiting the transportation of game outside State boundaries violated the Commerce Clause of the Constitution. The Supreme Court went to great lengths researching the law which had been extant in many countries and through several centuries of history. The conclusion was that the States had inherited from the Crown and Parliament of England all the rights, both of property and sovereignty, which were exercised in England over game and fish.

In the majority opinion of Mr. Justice White, this transfer of sovereignty and proprietary right over game and fish is succinctly stated:

"Undoubtedly this attribute of government to control the taking of animals *ferae naturae,* which was thus recognized and enforced by the common law of England, was vested in the colonial governments, where not denied by their charters, or in conflict with grants of the royal prerogative. It is also certain that the power which the colonies thus possessed passed to the States with the separation from the mother country, and remains in them at the present day, in so far as its exercise may be not incompatible with, or restrained by the rights conveyed to the Federal government by the Constitution."

In discussing the issue involved, namely, whether a State violated the Commerce Clause in prohibiting the transportation of game outside its borders, Mr. Justice White made the following salient observations:

"The foregoing analysis of the principles upon which alone rests the right of an individual to acquire a qualified ownership in game, and the power of the State, deduced therefrom, to control such ownership for the common benefit, clearly demonstrates the validity of the statute of the State of Connecticut here in controversy. The sole consequence of the provision forbidding the transportation of game, killed within the State, beyond the State, is to confine the use of such game to those who own it, the people of that State. The proposition that the State may not forbid carrying it beyond her limits involves, therefore, the contention that a State cannot allow its own people the enjoyment of the benefits of the property belonging to them in common, without at the same time permitting the citizens of other States to participate in that which they do not own. It was said in the discussion at bar, although it be conceded that the State has an absolute right to control and regulate the killing of game as its judgment deems best in the interest of its people, inasmuch as the State has here chosen to allow the people within her borders to take game, to dispose of it, and thus cause it to become an object of State commerce, as a resulting necessity such property has become the subject of interstate commerce, and is hence controlled by the provisions of article 1, section 8, of the Constitution of the United States. But the errors which this argument involves are manifest. It presupposes that where the killing of game and its sale within the State is allowed, that it thereby becomes commerce in the legal meaning of that word. In view of the authority of the State to affix conditions to the killing and sale of game, predicated is this power on the peculiar nature of such property and its common ownership by all the citizens of the State, it may well be doubted whether commerce is created by an authority given by a State to reduce game within its borders to possession, provided such game be not taken, when killed without the jurisdiction of the State. The common ownership imports the right to keep the property, if the sovereign so chooses, always within its jurisdiction for every purpose. The qualification which forbids its removal from the State necessarily entered into and formed part of every transaction on the subject, and deprived the mere sale or exchange of these articles of that element of freedom of contract and of full ownership which is an essential attribute of commerce. Passing, however, as we do, the decision of this question, and granting that the dealing in game killed within the State, under the provision in question, created internal State commerce, it does not follow that such internal commerce became necessarily the subject-matter of interstate commerce, and therefore under the control of the Constitution of the United States. The distinction between internal and external commerce and interstate commerce is marked, and has always been recognized by this court."

That the United States government is not the owner of game and fish, despite its superior treaty-making power, was decided in *Sickman* v. *United States* (1950), 184 F 2d. 616. In this case, plaintiff landowners located adjacent to a game preserve brought action under the Federal Tort Claims Act to recover damages to their crops claimed to have been destroyed by migratory waterfowl. The landowners alleged that the United States by having wild geese in its possession and control is responsible for any depredations which such geese may commit; and that the United States, when geese are in this country, is the owner of said geese, or is trustee for the high contracting parties to the treaties governing these migratory birds, and by reason of said trust owes the duty to protect innocent persons from damage which they may cause.

As to the ownership claim, the Court said:

"In the oral argument before this court, plaintiffs' counsel insisted that the United States government was the owner of the wild geese, at least while they were within the geographical confines of this nation. If counsel's theory is correct, presumably as such geese passed the Canadian boundary on their northern flight, and the Rio Grande River if they flew that far south, their ownership passed then to the governments of Canada and Mexico respectively. Plaintiffs' theory as to the ownership of migratory wild fowl which have not been reduced to possession is without merit and cannot be sustained. * * *

"The United States, *considered as a private person,* did not have any ownership, control or possession of these wild geese which imposed liability for their trespasses. * * *"

IV. U.S. SUPREME COURT DECISIONS MODIFYING STATE OWNERSHIP DOCTRINE

The doctrine of State ownership of game and fish has been only slightly modified by the United States Supreme Court in three cases. These are:

(1) *Missouri* v. *Holland,* 252 U.S. 416 (64 L. Ed. 641), held that the treaty-making power of the United States is supreme and thus the Migratory Bird Treaty and the Migratory Bird Treaty Act passed pursuant thereto are the supreme laws of the land. Previously there had been an act of Congress regulating migratory birds which had been declared unconstitutional in *United States* v. *Shauver,* 214 Fed. 154, and *United States* v. *McCullagh,* 221 Fed. 288. This decision was based on the concept that the States owned migratory birds and that they could

not be the subject of Congressional exercise of power. However, since the treaty-making power vested in the United States is part of the Supremacy Clause, the Supreme Court speaking through Justice Holmes held that a treaty on the subject of migratory birds supervenes all Federal and State constitutions and laws and creates rights superior to those previously exercised either by the States or their citizens. There is nothing in this decision which otherwise negates the holding in the *Geer* case that the States are owners of resident game and fish.

(2) *Toomer* v. *Witsell*, 334 U.S. 385, (92 L. Ed. 1460), held that when a State permits and encourages fish to enter the stream of interstate commerce, it cannot discriminate by imposing licensing fees and taxes on nonresidents greater than those imposed on residents. This case involved the constitutionality of South Carolina statutes governing commercial shrimp fishing in the three-mile maritime belt off the coast of that State. The statutes in question permitted transportation of shrimp out of South Carolina but imposed a tax considerably higher than that paid by a resident of the State. They also imposed a fee on the shrimp boat—$25 if owned by a resident, and $2500 if owned by a non-resident.

Chief Justice Vinson in distinguishing this situation from that in *McCready* v. *Virginia*, 94 U.S. 391 (24 L. Ed. 248), pointed out that the *McCready* case related to a non-migratory fish species. It was also observed in the opinion that although the *Geer* case involved a statute prohibiting the transportation of game out of the State, these statutes of South Carolina not only permitted the shrimp to be placed in interstate commerce but even encouraged the citizens of South Carolina to do so.

In applying the Commerce Clause the Court said (p. 402):

"The whole ownership theory, in fact, is now generally regarded as but a fiction expressive in legal shorthand of the importance to its people that a State have power to preserve and regulate the exploitation of an important resource. And there is no necessary conflict between that vital policy consideration and the constitutional command that the State exercise that power, like its other powers, so as not to discriminate without reason against citizens of other States."

Thus the fullest import of this decision is that even though a State may have plenary authority over its game and fish, it cannot avoid or circumvent the command of the Commerce Clause when it permits its game and fish to be placed in the stream of interstate commerce.

(3) *Takahashi* v. *Fish and Game Commission*, 334 U.S. 410, (92 L. Ed. 1478), held that a State could not discriminate in the granting of fishing licenses as between aliens and citizens since under the Federal Constitution the power to regulate the activities of aliens is vested in the Congress.

Torao Takahashi, an alien of Japanese origin, was denied a license to engage in commercial fishing in the coastal waters of the State of California under a statute passed in 1943 prohibiting the issuance of such licenses to aliens ineligible for United States citizenship. Japanese fell within that class. Having been denied a license, Takahashi filed an action in mandamus in the State court to compel the Commission to issue him a license. The Supreme Court of California, 30 Cal. (2d) 719, 185 P. (2d) 805, validated the statute chiefly on the ground that California had a proprietary interest in the fish found in the three-mile belt and thus could bar aliens from participating in the taking of this species of State property.

Justice Black, writing the majority opinion, referred to *Truax* v. *Raich*, 239 U.S. 33, which involved the validity of an Arizona law militating against employers hiring alien employees. He stated:

"This court, in upholding Raich's contention that the Arizona law was invalid, declared that Raich, having been lawfully admitted into the country under federal law, had a federal privilege to enter and abide in 'any State in the Union' and thereafter under the Fourteenth Amendment to enjoy the equal protection of the laws of the state in which he abided; that this privilege to enter in and abide in any state carried with it the 'right to work for a living in the common occupations of the community,' a denial of which right would make of the Amendment 'a barren form of words.'"

The holding in this case of course must be limited to the issue involved, namely, whether a State can discriminate against an alien who apparently was making his livelihood from fishing in the waters of that State. The holding merely is to the effect that even though the State may have plenary authority over its resources such as game and fish, it cannot in the exercise of that authority deny aliens the same rights that it accords to its citizens because under the Federal Constitution the rights and immunities of aliens is a subject which has been vested in the Congress.

This again in no way upset or militated against the basic doctrine that the States not only are the owners of but exercise plenary authority over game and fish located within their boundaries.

Consequently, it is still the law of the land as can be garnered from decisions of both State and Federal courts that irrespective of the ownership of the land itself, the States still possess the primary proprietary and sovereign power to regulate and control the resident game and fish within their respective boundaries.

V. ANALYSIS OF SOLICITOR'S OPINION

A. Bases of Solicitor's contention

The Solicitor premises Federal power in the Congress to authorize the Secretary of the Interior to make the limited hunting and fishing regulations here specified upon:

1. Article IV, Sec. 3, clause 2 of the Federal Constitution, which provides:

"The Congress shall have the Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States * * *."

2. The authority of the Federal government to acquire lands within a State by eminent domain for purposes within the ambit of its constitutional powers.

3. Article VI, clause 2 of the Federal Constitution, which provides:

"This Constitution, and the laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; * * *."

4. The sovereign proprietary interest of the United States as a landowner.

Based upon the cases cited, the Solicitor concludes:

"* * * it is apparent that the United States constitutionally empowered as it is, may gain a proprietary interest in land within a State and, *in the exercise of this proprietary interest*, has constitutional power to enact laws and regulations controlling and protecting that land, including * * * resident species of wildlife situated on such land, and that this authority is superior to that of a state."

B. Analysis of cases cited by Solicitor

It is the purpose here to analyze critically the cases cited in the Solicitor's opinion, as well as others, to test the validity of the Solicitor's interpretation of the scope of Federal power under Art. IV, Sec. 3, clause 2 of the Federal Constitution to include the regulation by the United States of resident species of game upon Federally-owned lands.

None of the cases cited expressly support the Solicitor's broad conclusion.

1. *Hunt* v. *United States*, 278, U.S. 96 (1928)

This case involves the killing of deer on the Grand Canyon National Game Preserve by the District Forester under the direction of the Secretary of Agriculture. It arose because officers of the State of Arizona threatened to arrest and prosecute any person attempting to kill or possess or transport such deer for violation of the game laws of Arizona. Three persons who had killed deer under the authority of the United States officials were arrested. The United States brought suit against the Governor and Game Warden of the State of Arizona to enjoin them from continuing or threatening such proceedings. From a lower court decree in favor of the United States, the Governor and Game Warden appealed to the United States Supreme Court.

The Kaibab National Forest and the Grand Canyon National Game Preserve covered practically the same area in the State of Arizona. They were created by proclamations of the President under authority of Congress.

The Supreme Court found that the evidence made clear that the deer had injured the lands in the reserves by overbrowsing upon and killing young trees, shrubs, bushes, and forage plants; that thousands of deer had died because of insufficient forage; and that the direction given by the Secretary of Agriculture to kill large numbers of the deer and ship the carcasses outside the reserve limits was necessary to protect from injury *the lands* of the United States within the reserve. The Court specifically mentioned the fact that observance of the State game laws "would have so restricted the number of deer to be killed as to render futile the attempt *to protect the reserves*." (Emphasis supplied.)

The Court said:

"The direction given by the Secretary of Agriculture was within the authority conferred upon him by act of Congress. And the power of the United States *to thus protect its lands and property* does not admit of doubt (citing the Camfield case, the Utah Power and Light case, the McKelvey case and the Alford case), the game laws or any other statute of the state to the contrary notwithstanding."

The Supreme Court did not disturb or review a provision in the decree of the lower court that it "should not be construed to permit *the licensing* of hunters to kill deer within the reserve in violation of the state game laws." The decree of the lower court was modified by requiring all carcasses of deer and parts shipped outside the boundaries of the reserves to be marked to show that the deer were killed under the authority of the United States officials within the limits of the reserves.

2. *Camfield* v. *United States*, 167 U.S. 518 (1897)

Before analyzing the portion of the Solicitor's opinion which touches upon the constitutional powers of Congress to acquire, presumably without cession, the lands within the National Wildlife Refuge System for the various purposes of wildlife conservation, (1) we shall examine the early and often cited case of *Camfield* v. *United States*, 167 U.S. 518 (1897), from which the Solicitor has quoted as follows:

(1) The portion of the opinion referred to is that which reads: "There can be no doubt that the Federal Government may acquire lands within a State for purposes within the ambit of its constitutional powers, and that it may do so by virtue of the power of eminent domain. *Fort Leavenworth R.R.* v. *Lowe*, 114 U.S. 525, 531 (1885). In the exercise of this power the United States has acquired land for many purposes, including wildlife refuges, game ranges, preserves, parks, and reservations, to name a few."

"The general Government doubtless has a

power *over its own property* analogous to the police power of the several States, and the extent to which it may go in the exercise of such power is measured by the exigencies of the particular case." (Emphasis supplied.)

This quotation, while accurate, is taken out of context and does not accurately reflect the Court's own words of limitation contained in that opinion.

The *Camfield* case involved the construction and application of an act of Congress to prevent unlawful occupancy of public lands by making unlawful all fencing of public lands by persons having no claim of title. Defendants had fenced their own alternate odd numbered sections of land so as to enclose 20,000 acres of public land. The United States proceeded under this act to compel defendants to remove their fences. With respect to public domain land, the Court there said:

"While the lands in question are all within the state of Colorado, the Government has with respect to its own lands, the rights of an ordinary proprietor, to maintain its possession and to prosecute trespassers. It may deal with such lands precisely as a private individual may deal with his farming property. It may sell or withhold from sale. It may grant them in aid of railways or other public enterprises. It may open them to preemption or homestead settlement but it would be recreant to its duties as a trustee for the people of the United States to permit any individual or private corporation *to monopolize them for private gain,* and *thereby practically drive intending settlers from the market.* * * * (Emphasis supplied)

The Court there held the statute before it applicable to defendants' lands, and said:

"Considering the obvious purposes of this structure (fencing the specific odd numbered sections) and *the necessities* of preventing the inclosure of public lands, we think the fence is clearly a nuisance, and that it is within the constitutional power of Congress to order its abatement, notwithstanding such action may involve an entry upon the lands of a *private individual.* The government doubtless has a power over its own property analogous to the police power of the several States, and the extent it may go in the exercise of such power is measured by the exigencies of the particular case. *If it be found necessary for the protection of the public, or of intending settlers, to forbid all inclosures of public lands, the government may do so,* though the alternate sections of private lands are thereby rendered less available for pasturage. * * *

"While we do not undertake to say that Congress has the unlimited power to legislate against nuisances within a state, which it would have within a territory, we do not think the admission of a territory as a state deprives it of the power of legislating *for the protection of the public lands,* though it may thereby involve the exercise of what is ordinarily known as the police power, *so long as such power is directed solely to its own protection.* A different rule would place the public domain of the United States completely at the mercy of state legislation." (Emphasis supplied.)

3. *Utah Power and Light Co.* v. *United States* 243 U.S. 389 (1917)

The Solicitor quotes the following from the *Utah Power and Light Co.* case:

"True, for many purposes a State has civil and criminal jurisdiction over lands within its limits belonging to the United States, but this jurisdiction does not extend to any matter that is not consistent *with full power in the United States* to protect its lands, *to control their use,* and to prescribe in what manner others may acquire rights in them." (Emphasis supplied.)

From this quotation the Solicitor seems to read into that case a determination that the ownership of land by the United States carries with it plenary power "to control the use of its land." There is the implication that this power extends to establishing a refuge for game other than such as is the subject of treaty. (2) It is submitted that this case must be read within the framework of the facts and claims of the parties.

(2) See U.S. Attorney General Opinion, Vol. XXIII, page 589 (Nov. 29, 1901) attached hereto.

The *Utah Power and Light Co.* case involved suits brought by the United States to enjoin the continued occupancy and use, without permission, of certain lands in forest reservations in Utah as sites for works employed in generating electric power. Almost all the lands in the reservation belonged to the United States and before reservation by executive order with the express sanction of Congress were public lands subject to disposal under the general land laws.

The defendants (among them the Utah Power and Light Company) contended that their claims to the right to occupy such land must be tested by the laws of the State in which the lands were situated rather than by legislation of Congress.

Defendants also claimed that some of the regulations promulgated by the Secretary of the Interior under the Congressional act empowering the Secretary to make general regulations to permit the use of rights of way through public lands, forest reservations and others go beyond what is appropriate for the protection of the inteerst of the United States and are unconstitutional, unauthorized and unreasonable.

To this the Court said:

"If any of the regulations go beyond what Congress can authorize, or beyond what is authorized, those regulations are void and may be disregarded; but not so of such as are thought merely to be illiberal, inequitable, or not conducive to the best results."

It should be noted that the Court supported only the position of the government that under Congressional authorization it had the constitutional power to protect government lands against trespass and injury. This is the right of every property owner whether public or private. There is no support in this case for the unfounded proposition in the Solicitor's opinion that this holding accords to the United States government rights in the game and fish on such lands—rights which belong to the States and cannot be taken away from them by mere ownership of lands even by the United States.

4. *United States* v. *Alford,* 274 U.S. 264, 267 (1927)

The Solicitor has made the following statement, citing in support thereof the cases of *United States* v. *Alford* and *Camfield* v. *United States,* supra:

"The authority of the proprietary interest is so substantial that it has been protected by holding enforceable Congressional statutes forbidding the acts on land adjoining Federally-owned lands that might endanger the latter."

Although this statement may be true, nevertheless the *Alford* case fails to support the proposition that by mere ownership of lands with its concomitant right to protect such lands against injury, the government of the United States ipso facto become the regulatory owner of resident game and fish.

5. *Chalk* v. *United States,* 114 F 2d 207 (4th Cir., 1940)

The Solicitor's opinion concludes with the following declaration:

"The basic constitutional authority appertaining to the proprietary interest in land owned by the United States has sustained the killing of game on Federally-owned land by Federal officials while acting within the scope of their authority, although acting in violation of the game laws of the State in which the land was located. *Hunt* v. *United States,* 278 U.S. 96 (1928); *Chalk* v. *United States,* 114 F 2d 207 (4th Cir., 1940).

"From the foregoing authorities it is apparent that the United States constitutionally empowered as it is, may gain a proprietary interest land within a State and, in the exercise of this proprietary interest, has constitutional power to enact laws and regulations controlling and protecting that land, *including* the persons, inanimate articles of value, and *resident species of wildlife situated on such land,* and that this authority is superior to that of a State."

We totally disagree with these broad and unqualified conclusions and we submit the cases cited do not support them.

The *Hunt* case did not decide that there was Constitutional power under Art. IV to regulate and protect game *as a part* of the land in the exercise of Federal power to protect the land and property thereon.

The *Chalk* case planted decision on two grounds, namely, the protection of forest land itself from damage by an overabundance of game without sufficient pasturage and upon cession of the exclusive jurisdiction over wild game on the game preserve.

The *Chalk* case was a suit brought by the United States against the Commissioner of Game and Inland Fisheries of North Carolina and State officials under his direction and supervision to enjoin and restrain them from enforcing state-wide game laws respecting game, birds and fish on lands of the United States known as Pisgah National Forest and the Pisgah National Game Preserve.

The case arose out of a determination by the United States Secretary of Agriculture that the deer herd in the Game Preserve was damaging and injuring the land and forest and authorizing the diminishing of the herd by hunting and trapping under conditions as the Chief of the Forest Service might find necessary.

On authority of *Hunt* v. *United States,* supra, the Court held that the United States had the undoubted right to protect its lands and property from severe damage. But the controlling issue upon which the Court planted its decision was that the land constituting the national forest had been acquired by the United States *with the consent of the State of North Carolina; and that there had been a cession of exclusive jurisdiction over the control of wildlife in the Pisgah Game Preserve by North Carolina to the United States under a 1915 act of the North Carolina legislature* (3) which was accepted by subsequent amendments to the Weeks Act under which the game preserve was established within the boundaries of the National Forest. (4)

(3) "An act to give the consent of the State of North Carolina to the making by the Congress of the United States, or under its authority, of all such rules and regulations as in the opinion of the Federal Government may be needful in respect to game animals, game and non-game birds, and fish on lands, and in or on the waters thereon, acquired by the Federal Government in the western part of North Carolina for the conservation of the navigability of navigable rivers."

(4) The amendment prohibited the taking of wildlife on such Preserves except under rules and regulations made by the Secretary of Agriculture.

Concerning this power, the Court stated:

"In addition to the inherent power of the Government to protect its property we have the power expressly ceded to the plaintiff by the State of North Carolina in the Act of 1915 * * *. In this Act the State ceded exclusive jurisdiction over the control of wildlife in the Pisgah Game Preserve to the Federal Government and such cession of jurisdiction for a limited purpose is exclusive as to that purpose, while not necessarily a cession of the right to legislate for all purposes.* * *

"The State of North Carolina having granted to the plaintiff exclusive jurisdiction over the wild life in the Game Preserve, the State could not, by the passage of any General Game Law, in any way affect the right

of the plaintiff under the cession." (Emphasis supplied.)

Again we say that these decisions in no manner support the magisterial but tenuous propositions and conclusions of the Solicitor that the United States government as the result of mere ownership of lands thereby acquires regulatory power over resident game and fish to the exclusion of the State in which the lands are located.

VI—BASIC FALLACY OF SOLICITOR'S OPINION

Failure to recognize the rule governing determination of rights accruing to the United States out of ownership of property (not public domain land, but property acquired by purchase or condemnation)

The fallacy of the Solicitor's broad and sweeping conclusions stems from his failure to recognize the elementary premise that the United States, despite its awesome sovereignty, in purchasing or acquiring lands in the several States secures only those muniments of title possessed by the owner in the role of seller.

Concededly, under the law of every State the prior private owner did not own any rights in the game and fish found on such lands as against the State, or at most he had a very limited and qualified right in the game and fish. By purchasing or acquiring lands from such prior private owner, the United States did not and could not secure the proprietary and sovereign rights which the State possessed in the resident game and fish involved.

That the United States government in acquiring land in the several States gets only such rights therein as are prescribed by State law is a proposition well supported by many court decisions. Among these decisions are the following:

(1) *United States* v. *Fallbrook Public Utility District, 165, F. Supp 806 (1958):* In this case the United States sought to claim certain water rights arising out of government ownership of land in California by reason of its sovereign status in spite of its prior stipulation disclaiminig that for such reason it had "rights to a greater quantity of water than a person not a sovereign would have, standing in the position of the United States."

The District Court in ruling on a pre-trial motion refused to allow this claim and restricted the government's claim to that made stipulation, which the Court stated to be:

"The rights to the use of water which the United States acquired when it purchased the Rancho Santa Margarita. Such rights are the same rights, no more and no less, than the Rancho had, and hence the United States acquired the same rights as any private party who might have purchased the Rancho."

In the memorandum opinion, the Court said:

"Finally, we believe that *the stipulation accords with the law* in the matter (1) as to the rights claimed by the United States and (2) that state law controls. The stipulation recognized well-established law—that when the United States contracts or acquires property within a state, the law of that state controls what rights in the United Sates arise therefrom. (*United States* v. *Burinson,* 1950, 339 U.S. 87, 90, 70 S. Ct. 503, 94 L. Ed. 675; *Reading Steel Casting Co.* v. *United States,* 1925, 268 U.S. 186, 188, 45 S. Ct. 469, 69 L.Ed. 907; *United States* v. *Fox,* 1876, 94 U.S. 315, 320, 24 L.Ed. 192; *United States* v. *Nebo Oil Co.,* 5 Cir., 1951, 190 F.2d 1003, 1010; *United States* v. *Williams,* 5 Cir., 1947, 164 F.2d 989, 993; *Los Angeles & Salt Lake R. Co.* v. *United States,* 9 Cir., 1944, 140 F.2d 436, 437, certiorari denied 1944, 332 U.S. 757, 64 S. Ct. 1264, 88 L.Ed. 1586; *Werner* v. *United States* D.S.C.D. Cal. 1950, 10 F.R.D. 245, 247. All that Mr. Veeder has done is to stipulate in accordance with applicable law."

(2) *United States* v. *Nebo Oil Co., 190 Fed. 2d 1003 (1951):* The doctrine that the law of the State where United States property is located governs determination of specific property rights in such land was upheld in the case of *United States* v. *Nebo Oil Co.,* supra. This was a suit brought by the United States for a declaratory judgment that it was the owner of minerals in 800 acres of land in Louisiana purchased for national forest subject to the prior sale of minerals under the land under statutory prescription. The Louisiana State Supreme Court had held a subsequent Louisiana statute which made mineral rights in lands sold to the United States subject to reservation or prior sale of such rights imprescriptible applicable to sales made to the United States prior to the effective date of the Act. This opinion was based upon a holding that, under Louisiana law, laws of prescription are retrospective in operation. The Federal Circuit Court of Appeals held it was bound by the State Court's interpretation of the subsequent statute. In disposing of the United States' contention that the latter statute as construed was unconstitutional as disposing of property belonging to the United States in violation of Art. IV, Section 3, Cl. 2 of the United States Constitution, the Court held that under Louisiana law the United States acquired no vested interest in the minerals protected by the Constitution.

(3) *United States* v. *Fox (1876), 94 U.S. 315, 320:* In this case the Court held that a devise of land in New York to the United States was void under a New York statute of wills which provided that a devise of lands in that State could be made only to natural persons and to corporations created under the laws of the State which were authorized to take by devise. It also held that it was bound by the holding of the New York Court of Appeals construing the state statute.

In arriving at its decision, the Court said:

"The power of the State to regulate the tenure of real property within her limits, and the modes of its acquisition and transfer, and the rules of its descent, and the extent to which a testamentary disposition of it may be exercised by its owners, is undoubted. It is an established principle of law, everywhere recognized arising from the necessity of the case, that the *disposition of immovable property, whether by deed, descent, or any other mode, is exclusively subject to the government within whose jurisdiction of the property is situated.* McCormick v. Sullivan, 10 Wheat. 202. The power of the State in this respect follows from her sovereignty within her limits, as to all matters over which jurisdiction has not been expressly or by necessary implication transferred to the Federal government. *The title and modes of disposition of real property within the State whether inter vivos or testamentary, are not matters placed under the control of Federal authority.* Such control would be foreign to the purposes for which the Federal Government was created, and would seriously embarrass the landed interests of the State."

The principle of *United States* v. *Fox,* supra, was reaffirmed in *United States* v. *Burnison* (1950), 339 U.S. 87.

(4) *United States* v. *Williams, 5 Cir. (1947), 164 Fed. 2d 989; and Los Angeles & Salt Lake R. Co.* v. *United States, 9 Cir. (1944), 140 Fed. 2d 436:* State law controlled construction of the rights acquired by the United States as a purchaser at a judicial sale in *United States* v. *Williams,* supra; and in *Los Angeles & Salt Lake R. Co.* v. *United States,* supra, a deed conveying California land to the United States was interpreted by California law.

(5) *Werner* v. *United States, D.C.S.D. Cal. (1950), 10 F.R.D. 245:* The *Werner* case involved a lease of land in California to the United States. The Court there said:

"Validity of the lease and option to renew in controversy here and the rights of the parties derived therefrom are governed by the law of California where the land is situated and the lease was made. (Citations)".

(6) *Reading Steel Casting Co.* v. *United States (1925), 286, U.S. 186:* It is a basic legal doctrine that the rights of the United States in its property are determined by the same principles as govern conveyances between individuals. Such was the holding in *Reading Steel Casting Co.* v. *United States,* supra. This case involved rights in chattels. The Court there said:

"The contract is to be construed and rights of the parties are to be determined by the application of the same principle as if the contract were between individuals. *Smoot's Case,* 15 Wall. 36, 47; *Manufacturing Co.* v. *United States,* 17 Wall. 592, 595; *United States* v. *Smith,* 94 U.S. 214, 217."

(7) *United States* v. *Smith, 94 U.S. 214, 217:* The above doctrine was also delineated in *United States* v. *Smith,* supra, where the Court through Mr. Justice Waite said:

"* * * it was decided in *Smoot's Case,* 15 Wall. 546, that the principles which govern inquiries as to the conduct of individuals, in respect to contracts, are equally applicable where the United States is a party."

But the Solicitor attempts to overcome this hurdle by arrogating to the United States rights and powers beyond that of a mere individual land owner by stating:

"These broad powers arise out of the proprietary interest of the United States to control the use of its land *and they exceed the powers of an ordinary land owner in the respect that the interest is held by a sovereign and carries with it enforcement powers, referred to as police powers.*"

It is clear that this statement of the Solicitor is not supported by the cases, above cited and discussed.

VII. REGULATION OF MIGRATORY SPECIES

In United States v. Shauver, 214 Fed. 154, 156, the proposition that the United States government had inherent sovereign powers over migratory birds was rejected by the courts. In this case the constitutionality of the Act of March 4, 1913, c. 145, 37 Stat. at L. 847, protecting migratory birds and game, was before the District Court of the Eastern District of Arkansas. It was there contended by the United States that the Congress possessed the power to regulate migratory birds and game as an "implied attribute of sovereignty in which the national government has concurrent jurisdiction with the States."

The court disposed of this contention as follows:

"A similar argument was presented to the court in Kansas v. Colorado, 206 U.S., 46, 89, 27 Sup. Ct. 655, 664 (51 L. Ed. 956), but held untenable. Mr. Justice Brewer, speaking for the court, disposed of it by saying:

" 'But the proposition that there are legislative powers affecting the nation as a whole, which belong to, although not expressed in, the grant of powers, is in direct conflict with the doctrine that this is a government of enumerated powers. That this is such a government clearly appears from the Constitution, independently of the amendment, for otherwise there would be an instrument granting certain specified things made operative to grant other and distinct things. This natural construction of the original body of the Constitution is made absolutely certain by the tenth amendment. This amendment, which was seemingly adopted with prescience of just such a contention as the present, disclosed the wide-spread fear that the national government might, under the pressure of a supposed general welfare, attempt to exercise powers which had not been granted. With equal determination the framers intended that no such assumption should ever find justification in the organic act, and that, if in the future further powers seemed necessary, they should be granted by the people in the manner they had provided for amending that act. * * * Its principal purpose was not the distribution of power between the United States and the states,

but a reservation of the people of all powers not granted.'"

Apparently the soundness of this decision was accepted by the United States officials and it was succeeded by the negotiation of the Migratory Bird Treaty and adoption of the Migratory Bird Treaty Act, both sanctioned by the Supreme Court in *Missouri* v. *Holland*, supra.

Consequently, the rights and powers acquired by the United States when it secures title to lands by purchase or condemnation cannot be tested by any nebulous or farfetched assertion of inherent sovereignty. The true test is similar to that applicable to lands owned by a private owner, namely, the doing of those things or the taking of such action as may be necessary to preserve and protect the muniments of title which the government received from the former private owner. The extent of these muniments of title must be tested by the laws of the States in which the land is situated. Since game and fish are not part of the muniments of title, and since the United States does not have any inherent sovereignty over game and fish as such, this contention of the Solicitor must necessarily fall because it cannot be sustained by its own bootstraps.

VIII. SCOPE OF FEDERAL POWER DEFINED

The correct approach to the problem of the Federal government's power to regulate resident species of wildlife on Federally-owned land in the National Wildlife Refuge System is developed by the Court in *United States* v. *2,271.29 Acres, More or Less, of Land in LaCross, Trempeleau, Vernon and Grant Counties, Wis., et al.*, 31 F 2d 617 (1923). This was a condemnation proceeding for lands in the Upper Mississippi Wild Life and Fish Refuge, provided for by Act of Congress of June 7, 1924. The Attorney General of Wisconsin appeared and contended that the legislative consent involved in the case violated the State Constitution. He argued

"* * * the state holds and controls navigable waters in trust for its people, and may not delegate such trust to another sovereignty, and it is under similar nondelegable obligation to its people with respect to game animals, fowl, and fish.

"It is not to be denied that the national government may acquire lands necessary or convenient for the exercise of its powers, within any of the states, and that neither the consent of the states nor of individuals is necessary. Kohl v. United States, 91 U.S. 367, 23 L. Ed. 449.

The court found that no navigable waters were involved so that no question of unlawful abdication of the State's obligation to the people in that respect was considered.

On the question of Federal power to regulate game in connection with refuges established under the Migratory Bird Treaty Act, the court said:

"But it is clear, also, that the right to regulate the taking and use of game and fish is, generally speaking, in the state as an attribute of its sovereignty, subject only to valid exercise of authority under the provisions of the Federal Constitution. Geer v. Connecticut, 161 U.S. 519, 16 S. Ct. 600, 40 L. Ed. 793; Ward v. Racehorse, 163 U.S. 504, 16 S. Ct. 1076, 41 L. Ed. 244; Kennedy v. Becker, 241 U.S. 556, 564, 36 S. Ct. 705, 60 L. Ed. 1106; Carey v. South Dakota, 250 U.S. 118, 120, 39 S. Ct. 403, 63 L. Ed. 886.

"In so far as the 'Refuge Act' relates to migratory birds within the terms of the treaty with Great Britain (39 Stat. 1702) and the Migratory Bird Act (40 Stat. 755 (16 USCA Sec. 703 et seq.)), the state's power to consent to the acquisition of land for the purpose of conserving migratory bird life is not open to question. The national government's power to regulate the taking and use of such birds was upheld in Missouri v. Holland, 252 U.S. 416, 40 S. Ct. 382, 64 L. Ed. 641, 11 A.L.R. 984, and there can exist in the State of Wisconsin no trust or obligation to its people requiring it to refuse consent that the national government carry out the latter's constitutional powers. On this branch of the case there remains only the question of the validity of the state's consent relating to game animals, birds (other than migratory), and fish.

"In this connection it may be well to note that the 'Refuge' Act contemplates no general regulation of the game and fish within the state but merely that the United States shall acquire and own a limited tract or tracts of land to be used as a refuge and breeding place for such game. Manifestly the purpose is conservation by an approved and effective method, providing a place of limited area where such game may resort, thrive, and multiply, and to that end hunters and fishermen may be excluded under regulations of the Secretaries of Agriculture and Commerce, and prosecuted by the federal authorities in federal courts for violation of such regulations. * * *

"As I view the so-called 'Refuge' Act, it establishes primarily a refuge for migratory birds. Congress apparently recognized the fact that, as a necessary and natural result of establishing such a refuge, nonmigratory birds, game generally, and insofar as the lands were overflowed, fish, would resort thereto and breed therein, so that incidentally the area would become a refuge for many kinds of game. Their increase in the area might or might not become inimical to the welfare of migratory birds. On the other hand, the pressure of some varieties of other game and fish, and the conservation of aquatic plants, etc., will undoubtedly be of great value to the area as a refuge for migratory fowl. So it seems quite essential that as an incident to the maintenance of the refuge for migratory birds, those in charge have some power of regulation over the number and kinds of other game present, and also, in order that the migratory birds may be secure in their refuge that hunters and fishermen be at times excluded. Thus as an incident to the main purposes arises the necessity of regulation of game which ordinarily is subject to regulation by the state alone. *United States* v. *Shauver* (D.C.) 214 F. 154; *U.S.* v. *McCullaugh* (D.C.) 221 F. 288. This intent of Congress to give to the Secretaries of Agriculture and Commerce the right of regulation of game other than migratory birds, as an incident merely to the main purpose, is clearly and definitely indicated by the phrases 'to such intent', as they are used in section 3 of the act. * * *

"What has been said goes far to solve the other questions raised by the challenge of the validity of the 'Refuge' Act as beyond the power of Congress. *The power of Congress to establish a refuge for game, other than such as is the subject of treaty, may well be seriously doubted.* See *Missouri* v. *Holland, U.S.* v. *Shauver* and *U.S.* v. *McCullaugh, supra.* It may be assumed that it has no such power. Nevertheless it may conserve migratory birds, and do what is reasonably necessary to carry out that power.

"It has long been settled that Congress may select the means to carry out a federal function, without interference from the courts. Granting the power to establish a refuge for migratory birds, it follows that it is well within the power of Congress to authorize the Secretary of Agriculture to acquire lands within a state for that purpose, and to authorize the Secretaries of Agriculture and Commerce to make such regulations relating to wild life generally including nonmigratory game and fish, as becomes reasonably necessary to maintain a proper and efficient migratory bird refuge, and such other regulations as may attend the proprietary ownership of the area by the government under subsection 2, sec. 3, Art. 4 of the Constitution. Thus viewed, no lack of power in Congress to enact the 'Refuge' Act is perceived." (Emphasis supplied.)

Although the Solicitor recognizes the general power of the States to protect fish and game within their territorial limits as an attribute of the States' sovereignty, nevertheless he infers that it is open to question whether the States' sovereign power over hunting and fishing extends to any Federally-owned land. This inference is not consistent with prior decisions of the Solicitor for the Department of the Interior, or the Attorney General of the United States.

In an opinion by Attorney General John W. Griggs to the Secretary of State dated September 20, 1898 (Opinions of U.S. Attorney General, vol. 22, page 214 et seq.) pertaining to the power of the United States to enter into treaty stipulations with Great Britain for the regulation of the fisheries in waters of the United States and Canada along the international boundary, he said:

"The regulation of fisheries in navigable waters within the territorial limits of the several States, in the absence of a Federal treaty, is a subject of State rather than of Federal jurisdiction. Congress has the paramount right to regulate navigation in the navigable waters of the United States, but Congress has no authority, in the absence of treaty regulations, to pass laws to regulate or protect fisheries within the territorial jurisdiction of the States. (McCready v. Virginia, 94 U.S. 391; Lawton v. Steele, 152 U.S. 133.)"

In an opinion of the Department of the Interior dated April 15, 1931 (Vol. 53, page 349), on the applicability of State fish and game laws to lands alloted to Indians from the public domain it is said (page 361):

"* * * and on the public domain 'The power of all the States to regulate the killing of game within their borders will not be gainsaid.' (Ward v. Race Horse, 163 U.S. 504)."

In another opinion of the Department of the Interior dated February 12, 1943 (Vol. 58, page 331), the following was expressed relating to regulations of hunting and fishing on land ceded by the Shoshone and Arapahoe to the United States under treaty for disposition as provided by Congressional Act (33 Stat. 1016):

"But it is still necessary to determine whether the United States had any interest in the ceded lands that the State was barred from exercising its police power over them. Although the tribal councils no longer could regulate hunting and fishing on the ceded lands, such a power, it might be argued, was vested in the Secretary of the Interior as conservator of the public domain.

"There is no doubt, however, that the State can enforce its conservation laws on public lands. The Federal Government, to be sure, if necessary to protect its interests in such lands, may disregard State conservation laws, but in the absence of an overriding *Federal interest*, they remain applicable. Although it has been held that, under authority conferred by statute, Federal administrative officers could proceed to exterminate deer committing depredations in a national forest despite inhibitions of State conservation laws, it is implicit in this decision that the State conservation laws would normally have governed (Hunt v. United States, 278 U.S. 96). Federal jurisdiction over game in a national forest was based on an express cession of State jurisdiction in Chalk v. United States, 114 F (2d) 207 (C.C.A. 4, 1940). As said by Mr. Justice Brandeis in Omaechevarria v. Idaho, 246 U.S. 343, 346:

"'* * * The police power of the State extends over the federal public domain, at least when there is no legislation by Congress on the subject. * * *'

"The crucial question in determining the applicability of State conservation laws to ceded Indian lands is whether the exercise of this jurisdiction will interfere with or embarrass the Federal Government in the execution of *the purpose for which it holds the lands.* Even if State jurisdiction over such lands be conceded, still it does not extend as the court said in the Utah Power and Light Co. v. United States, 243 U.S. 389, 404:

"' * * * to any matter that is not consistent with full power in the United States to protect its lands, to control their use and to prescribe in what manner others may acquire rights in them.'

See also Fort Leavenworth R.R. Co. v. Lowe, 114 U.S. 525; Arlington Hotel Company v. Fant, 278 U.S. 439; Surplus Trading Company v. Cook, 281 U.S. 647; James v. Dravo Contracting Co., 302 U.S. 134; Stewart & Co. v. Sadrakula, 309 U.S. 94.* * *

"I fail to perceive, however, any overriding Federal interest which would justify regulation by the Secretary of Interior of hunting and fishing on the ceded lands."

IX. CONCLUSIONS

Therefore, in view of the well-established and historical concept that all fish and wildlife found within the territorial limits of the States are the property of the several States and thus subject to their primary and sovereign control and regulation, various situations and relationships have to be considered in determining what authority the Federal government may exercise over fish and wildlife found on Federally-owned lands. These are outlined below:

1. Lands owned by the Federal government concerning which the State has made no cession of jurisdiction

(a) The State can regulate resident species of game and require persons to secure State licenses in order to hunt on such lands.

(b) Within the limits of Congressional authority, the Federal government through its duly authorized agency can prohibit hunting and impose restrictions on hunting which are more restrictive in their nature than those provided by State law. This it does in the exercise of its prerogatives and rights as a proprietor of the land it owns.

(c) When it becomes necessary to protect Federally-owned property from injury or destruction caused by depredations of resident species of wildlife, within the limits of Congressional authority the Federal agency in charge of such lands may reduce by its own agents the species involved. This the Federal government does as an ordinary proprietor of such lands for their protection against destruction by wildlife. This authority is no different from the right exercised by a private land owner, although many State laws require that he secure a permit for the killing of such wildlife.

(d) The Federal lands referrd to in the Solicitor's opinion are designated as "wildlife refuges, game ranges, wildlife ranges and other Federally-owned property under the administration of the Secretary." So long as there has been no cession of jurisdiction by the State to the Federal government with respect to any lands, it is of no importance what they are called or what uses the Federal government intends to make of them.

2. Federal enclaves

(a) In many States there exist areas known as Federal enclaves. These are areas containing Federally-owned lands concerning which there has been an unconditional cession of jurisdiction to the United States government. By this act of cession the State has relinquished its authority and jurisdiction excepting as to such matters which it might have reserved in the cession of jurisdiction. In effect, the lands of such Federal enclaves revert to their status of Federal territory. Consequently, assuming that in such unconditional cession of jurisdiction the State has not reserved the right to regulate and control hunting and fishing, the Federal government and not the State in such instance would have the authority to regulate these activities and the species of wildlife found upon such lands.

(b) Federal enclaves of course do not encompass the entire area of any State, and consequently the State can regulate and license the possession and transportation of wildlife occurring within the territory over which it still has jurisdiction. Therefore any person who either hunts or fishes on such enclaves nevertheless must comply with State laws regulating licensing, possession and transportation of game and fish taken in the enclave upon leaving the enclave and setting foot on the area under State jurisdiction.

3. Principles applicable to fisheries

The principles applicable to the fisheries and fishing are different from those applicable to resident game. In some States the riparian owner is given title to the bottomland of such waters; but even in those States, such as in Michigan, the State has a paramount and perpetual trust in all of its waters for the maintenance and preservation of the fish life therein. Consequently, whenever the Federal government purchases or condemns privately owned lands riparian to a body of water, it acquires only those rights which the private owner possesses. Therefore, whatever rights and authority States exercise over such waters and the bottom lands thereunder (except such rights as the Federal government exercises under the Commerce Clause), States may continue to exercise despite Federal ownership of such riparian lands.

The result is that the Federal government, even though it owns riparian lands, has no authority to regulate or control in any way either the fishery or the right of fishing in waters under State jurisdiction. Of course, should the State make an unconditional cession of jurisdiction to the Federal government of an area which includes lakes or rivers without reserving its authority over the fisheries, then the State has lost its authority to regulate or manage such fisheries.

4. The effect of treaties on wildlife and fish

A treaty negotiated under the treaty-making power of the United States becomes the supreme law of the land and all State or Federal laws become subordinate to the provisions of such a treaty. The Migratory Bird Treaty implemented by the Migratory Bird Treaty Act supervenes any State or Federal law. The government of the United States exercises the powers granted under the treaty, not as a land owner, but as a sovereign. The provisions of a treaty vesting authority in the Federal government to regulate certain species of migratory wildlife supersedes State authority and consequently any State laws in contravention of a treaty are null and void.

At the present time there is no treaty vesting the Federal government with authority to regulate the fisheries found within the States of the United States. Thus it cannot regulate any of the fisheries, even those found within the Great Lakes.

MEMORANDUM 36672 OF THE U.S. DEPARTMENT OF THE INTERIOR, OFFICE OF THE SOLICITOR, DECEMBER 1, 1964

To: Assistant Secretary for Fish and Wildlife.

From: Deputy Solicitor.

Subject: Authority of the Secretary of the Interior to manage and control resident species of wildlife which inhabit wildlife refuges, game ranges, wildlife ranges, and other Federally-owned property under the administration of the Secretary.

The Secretary of the Interior has promulgated general regulations, contained in Title 50 of the Code of Federal Regulations, and special regulations,[1] published annually in the Federal Register, that control the hunting and fishing activities of the general public upon those lands within the National Wildlife Refuge System (i.e., game ranges, wildlife ranges, wildlife refuges, and waterfowl production areas). These hunting and fishing regulations have taken one of two forms. Either the regulations incorporate by reference all the hunting and fishing laws of the States in which the refuge, range, or area is located, or the regulations expressly prohibit certain hunting and fishing activities which are permitted by State law. For example, if the State law authorizes the killing of two deer of either sex during a fixed season, the Secretary has either expressly adopted the State's season and bag limit for a particular refuge or has authorized only the killing of one deer of the male sex during a time period which is less than the deer hunting season prescribed by the State. The latter type of regulation is specifically designed to be more restrictive than the State hunting and fishing laws.

During the past several years Commissioners and Directors of the various State fish and game departments have questioned the authority of the Secretary to promulgate hunting and fishing regulations for lands within the National Wildlife Refuge System, when the regulations prohibit those activities which the State fish and game laws permit. These State officials have argued that the Secretary of the Interior does not have the authority to manage and control resident species of wildlife (i.e., all species of fish and game), which inhabit Federally-owned land under the administration of the Secretary. These State fish and game departments and the Ad Hoc Committee of the International Association of Fish and Game Commissioners, through conferences and correspondence with this Department, have maintained that the Secretary may issue *only* hunting and fishing regulations for resident species of wildlife that incorporate completely State law, because all resident specie of wildlife, other than migratory birds, are subject to the *exclusive* jurisdiction and control of the several States, and the States have some semblance of title to the resident species of wildlife. Accordingly, the U.S. Fish and Wildlife Service has raised the following question: Does the Secretary of the Interior have the authority to promulgate regulations which control the hunting and fishing activities of the general public on lands within the refuge system, when such regulations are more restrictive than State fish and game laws?

In order to analyze and answer this question it is necessary to eliminate certain collateral issues. When the States have ceded exclusive jurisdiction over land to the Federal Government, pursuant to Article I, Section 8 of the Federal Constitution and Section 355 of the Revised Statutes, as amended, 40 U.S.C. § 255 (1958), there is no question, in our opinion, that State fish and game laws have no application to the Federally-owned land. In those areas where there has been a cession of exclusive jurisdiction to the Federal Government, by definition, a State has no jurisdiction or control over the area.

Similarly, we do not feel that it is necessary to give extensive analysis to the problem of the States controlling the hunting and fishing activities of the general public on nonfederally-owned land. There is no question that the States have control and jurisdiction over the hunting and taking of resident species of wildlife, provided that such hunting activity occurs *only* upon land which is not owned by the Federal Government. The general power of a State to protect fish and game has always been considered an attribute of the sovereign power of the State. This proposition is supported by a long line of precedents. *Geer* v. *Connecticut*, 161 U.S. 519 (1896); *Ward* v. *Race Horse*, 163 U.S. 504 (1896); *LaCoste et al.* v. *Department of Conservation of the State of Louisiana*, 263 U.S. 545, 552 (1925); *Foster Packing Company* v.

[1] The authority of the Secretary to promulgate special hunting and fishing regulations for particular refuges, ranges, or areas has been delegated to the Regional Directors of the Bureau of Sport Fisheries and Wildlife. See 25 F.R. 8524, 4 AM 4.9C, Administrative Manual of the Bureau of Sport Fisheries and Wildlife, as amended by 28 F.R. 12834.

Haydel, 278 U.S. 1, 11 (1928); *State* v. *McCoy*, 387 P. 2d 942 (1963).

It is important to recognize that in all the above-cited cases the relationship involved was between a State and an individual, not between a State and the Federal Government. Therefore, when hunting activities occur on Federally-owned land, an entirely different analysis and approach is required, since the relationship would then involve a State and the Federal Government.

There can be no doubt that the Federal Government may acquire lands within a State for purposes within the ambit of its constitutional powers, and that it may do so by virtue of the power of eminent domain. *Fort Leavenworth R.R.* v. *Lowe*, 114 U.S. 525, 531 (1885). In the exercise of this power the United States has acquired land for many purposes, including wildlife refuges, game ranges, preserves, parks, and reservations, to name a few. Furthermore, the property clause of the Constitution, Article IV, Section 3, states, "The Congress shall have the Power to dispose of and *make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States* . . .". (Emphasis added). Finally, there is the supremacy clause of the Constitution, Article VI, which reads, "This Constitution, and the laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme law of the land . . .". The powers contained in the property and supremacy clauses of the Constitution extend not only to the public domain but also to property acquired by purchase or eminent domain. *McKelvey* v. *United States*, 260 U.S. 353 (1922); *Utah Power and Light Company* v. *United States*, 243 U.S. 389 (1917). It is the exercise of this power under the property and supremacy clauses which is dispositive of the question of the authority of the Federal Government, acting through the Secretary of the Interior, to manage and control resident species of wildlife, on Federal lands under his jurisdiction, through regulations which prohibit what State law permits.

The exercise of this constitutional authority to make rules and regulations for Federally-owned lands has often been challenged, but just as often upheld by the Courts. "The States and the public have almost uniformly accepted this [Federal] legislation as controlling, and in instances where it has been questioned in this Court *its validity has been upheld and its supremacy over State enactments sustained.*" (Emphasis added). *Utah Power and Light Company* v. *United States*, *supra*, at 404, and cases cited therein.

"The general Government doubtless has a power over its own property analogous to the police power of the several States, and the extent to which it may go in the exercise of such power is measured by the exigencies of the particular case." *Camfield* v. *United States*, 167 U.S. 518, 525 (1897).

These broad powers arise out of the proprietary interest of the United States to control the use of its land, and they exceed the powers of an ordinary landowner in the respect that the interest is held by a Sovereign and carries with it enforcement powers, referred to as police powers. *Utah Power and Light Company* v. *United States*, *supra*, at 405.

Even the property interest of an ordinary landowner is protected to the extent that: "The State cannot, within constitutional limits, by the issuance of hunting licenses which purport to give a hunter the right to invade the private hunting grounds owned by another person, or by any other means, authorize one to enter another's premises, for the purpose of taking game, without the latter's permission." 24 AM. Jur., *Game and Game Laws*, § 5. (See cases cited).

A fortiori, the Sovereign's proprietary interest includes that of an ordinary landowner. It too may protect its holding and forbid trespass and control people on the land whether they be hunting, fishing, or just visiting. In addition, articles of value on the land—timber, hay, water, resident game and wildlife—may also be protected by control over the land and persons on the land. "True, for many purposes a State has civil and criminal jurisdiction over lands within its limits belonging to the United States, but this jurisdiction does not extend to any matter that is not consistent with full power in the United States to protect its lands, to control their use, and to prescribe in what manner others may acquire rights in them." *Utah Power and Light Company* v. *United States*, *supra*, at 404.

The authority of the proprietary interest is so substantial that it has been protected by holding enforceable Congressional statutes forbidding acts on lands adjoining Federally-owned lands that might endanger the latter. *United States* v. *Alford*, 274 U.S. 264, 267 (1927); *Camfield* v. *United States*, *supra*.

The basic constitutional authority appertaining to the proprietary interest in land owned by the United States has sustained the killing of game on Federally-owned land by Federal officials while acting within the scope of their authority, although acting in violation of the game laws of the State in which the land was located. *Hunt* v. *United States*, 278 U.S. 96 (1928); *Chalk* v. *United States*, 114 F. 2d 207 (4th Cir., 1940). See also *Arizona* v. *California*, 283 U.S. 423 (1931) and *Johnson* v. *Maryland*, 254 U.S. 51, 56 (1920).

From the foregoing authorities it is apparent that the United States constitutionally empowered as it is, may gain a proprietary interest in land within a State and, in the exercise of this proprietary interest, has constitutional power to enact laws and regulations controlling and protecting that land, including the persons, inanimate articles of value, and resident species of wildlife situated on such land, and that this authority is superior to that of a State.

This broad Federal power to regulate and manage resident species of wildlife on Federally-owned land, which is derived from the Federal Constitution and the inherent powers of the Federal Government as a landowner, has been vested in the Secretary of the Interior with respect to those land and water areas which comprise the National Wildlife Refuge System by the regulatory sections of the following legislation:

Section 4 of the Act of September 28, 1962, 76 Stat. 653, 654 (1962); 16 U.S.C. § 460k–3 (Supp. V, 1959–63).

Section 4 of the Fish and Wildlife Coordination Act, 48 Stat. 401, 402 (1934), as amended, 16 U.S.C. §§ 661, 664 (1958).

Section 10 of the Migratory Bird Conservation Act, 45 Stat. 1222, 1224 (1929), as amended, 16 U.S.C. §§ 661, 664 (1958).

Section 4 of the Duck Stamp Act, 48 Stat. 451 (1934), as amended, 16 U.S.C. § 718d(b) (1958).

Furthermore, this authority to regulate and manage resident species of wildlife, which has been delegated to the Secretary by the above legislation, has been supplemented by *specific* legislation for the administration of particular areas. Examples of the regulatory sections of this specific legislation are as follows:

Bear River Migratory Bird Refuge, Section 5 of the Act of April 23, 1928, 45 Stat. 449, 16 U.S.C. § 690d (1958).

Lea Act Refuges, Section 3 of the Act of May 18, 1948, 62 Stat. 239, 16 U.S.C. § 695b (1958).

National Key Deer Refuge, Section 1 of the Act of August 22, 1957, 71 Stat. 412, 16 U.S.C. § 696 (1958).

Upper Mississippi River Wildlife and Fish Refuge, Section 3 of the Act of June 7, 1924, 43 Stat. 650, 16 U.S.C. § 723 (1958).

We interpret the regulatory sections of these statutes as containing sufficient legal authority for the Secretary to make all appropriate rules and regulations which are necessary for the effective administration of these lands within the National Wildlife Refuge System, including the authority to regulate such activities as public use, access, recreation, hunting and fishing, provided the regulations are (1) reasonable and appropriate (i.e., "needful"); (2) not inconsistent with the statutory source of the regulatory authority; and (3) consistent with the purposes for which the area was placed under the administration of the Secretary.

Concerning the restrictions that the regulations must not be inconsistent with the statutory source of the regulatory power, it is to be noted that the language contained in the regulatory sections of these statutes (*supra*) is broad in both scope and intent. An examination of the regulatory sections will show that sweeping, general language was used by Congress to authorize the Secretary to make rules and regulations which are necessary for the effective administration of refuge areas. This statutory source of regulatory authority is, in our opinon, sufficiently broad to permit the Secretary to prohibit all forms of public access, entry, and use of any portion of a refuge area. A fortiori, the statutory source necessarily includes the lesser power to permit the access and use of a refuge for limited purposes and upon such conditions as the Secretary may prescribe.

". . . we think the sound construction of the Constitution must allow to the national legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adopted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional." *McCulloch* v. *Maryland*, 4 U.S. (4 Wheat.) 415, 431 (1819).

Accordingly, the only meaningful legal issue to be discussed is whether the regulations governing fishing and hunting of resident species of wildlife within a refuge area are reasonable and appropriate, as well as related to the purpose for which the refuge area was acquired or established. Although these issues are primarily questions of fact, a discussion of the principles involved is in order.

Many areas within the National Wildlife Refuge System were acquired primarily for the protection and development of the migratory bird populations; however, some areas, such as the Desert Game Range, were established for the primary purpose of protecting an endangered species. It should also be noted that the Secretary, by law, is required to protect and manage resident species of wildlife which inhabit areas primarily acquired for migratory waterfowl. 48 Stat. 451 (1934), as amended, 16 U.S.C. § 718d (1958). Regardless of the particular species of wildlife for which the refuge area was primarily acquired, the Secretary must use sound conservation principles which are designed to prevent the overpopulation of wildlife, prevent the destruction of food supplies, and protect the general ecology, in administering all refuge areas.

In addition, the Secretary is now required to manage all areas within the National Wildlife Refuge System in such a manner as to allow various forms of recreational activity, which includes hunting and fishing, that are not inconsistent with the purposes for which the area was established. 76 Stat. 653 (1962), 16 U.S.C. § 460k (Supp. V, 1959–63). In managing areas within the refuge system, the Secretary must, out of necessity to preserve the area, control hunting and fishing pressures. Any regulation concerning hunting and fishing which has as its focal point sound conservation principles is not only reason-

able and proper but is also related to the purpose for which the area was acquired. To argue otherwise is to say that the Secretary is helpless to properly manage Federally-owned land and the public use of that land.

Inevitably, out of any discussion concerning the control of resident species of wildlife it is not surprising to have the questions of title to wild animals raised by the States.

With respect to game and wildlife generally, the Supreme Court has said that the power to control lodged in the State is to be exercised as a *trust for the benefit of the people* and not as a prerogative for the advantage of the Government. *Geer* v. *Connecticut, supra; Foster Packing Company* v. *Haydel, supra; State* v. *Rodman*, 58 Minn. 393 (1894); *Magner* v. *People*, 97 Ill. 320 (1881); *In Re Eberle*, 98 Fed. 295 (1899).

It is the law that he who claims title to game must first reduce it to possession. This proposition is supported by State court decisions too numerous to recite which enunciate that principle. These decisions extend from *Pierson* v. *Post*, 3 Caines 175 (New York, 1805), to *Koop* v. *United States*, 296 F. 2d 53 (8th Cir., 1961).

"The statutes declaring the title to game and fish as being in the State *speak only in aid of the State's power of regulations; leaving the landowner's interest what it is.*" (Emphasis added). *McKee* v. *Gratz*, 260 U.S. 127, 135 (1922).

It is clear that the "ownership" of wildlife by a State is a trust interest, and not a possessory title. *McKee* v. *Gratz, supra; Missouri* v. *Holland*, 252 U.S. 416 (1920); *Sickman et al.* v. *United States*, 184 F. 2d 616 (7th Cir., 1950). Further, the Supreme Court states that as between a State and its inhabitants, the State may regulate the killing and sale of migratory birds, "but it does not follow that its authority is exclusive of paramount powers. To put the claim of the State upon title is to lean upon a slender reed". *Missouri* v. *Holland, supra*, at 434. This authority of the State to regulate the killing of wildlife is based upon a trust concept, not upon ownership of or title in the wild animals. Under basic constitutional doctrine the trust or police power (i.e., regulatory jurisdiction) of a State yields to the exercise by the national government of its powers under the property clause of the constitution.

In this memorandum we have attempted to set out the broad authority of the Federal Government, *as a landowner*, to make needful rules and regulations for the management of its property. We have set forth some of the more pertinent legislation which delegated this broad power to the Secretary of the Interior. It is our conclusion that the Secretary has ample legal authority to make hunting and fishing regulations for particular areas within the National Wildlife Refuge System that prohibit activities authorized and permitted by State law. The regulation of the wildlife populations on Federally-owned land is an appropriate and necessary function of the Federal Government when the regulations are designed *to protect and conserve the wildlife as well as the land.*

EDWARD WEINBERG,
Deputy Solicitor.

[No. 7373—Civil action in the U.S. District Court for the District of New Mexico]

THE NEW MEXICO STATE GAME COMMISSION, PLAINTIFF, *v.* STEWART L. UDALL, SECRETARY OF THE INTERIOR; STANLEY A. CAIN, ASSISTANT SECRETARY OF THE INTERIOR; GEORGE HARTZOG, JR., DIRECTOR OF NATIONAL PARK SERVICE; NEAL G. GUSE, SUPERINTENDENT OF CARLSBAD CAVERNS NATIONAL PARK; R. R. MABERY, CHIEF RANGER; AND ROBERT J. SCHUMERTH, NEAL R. BULLINGTON, WILLIAM J. WILSON, ROBERT M. TURNER, WALTER B. O'NEAL, WALTER H. KITTAM, DERRICK C. COOKE, PARK RANGERS, DEFENDANTS

OPINION

This is a contest between the New Mexico State Game Commission and the Secretary of the Interior and his delegates. Ostensibly, the issue presented concerns the Secretary's authority to order the destruction of wildlife in the Carlsbad Caverns National Park, in violation of New Mexico law, for the purpose of conducting a scientific research study. The broader issue presented relates to the role of the States in the activity of wildlife management. Because federal lands located in states other than New Mexico might be effected by the outcome of this dispute, a number of states have appeared as *amicus curiae*.

Plaintiff has requested (1) a declaratory judgment pursuant to 28 U.S.C. § 2201, and (2) that the defendants be enjoined from killing any more wildlife on the park. Defendants contend that they are acting within their authority, and that this is in reality a suit, without consent, against the United States. They have responded with a motion for summary judgment.

The parties have filed herein a stipulation of the facts, and the case is being decided on its merits and not on the defendants' motion for summary judgment. Both parties desire that the Court decide the case on the stipulation as though a trial had been held.

When the parties signed and filed the stipulation of facts, the Court inquired whether the deer in question were to be killed to prevent injury to the park lands, or to permit a study to determine the likelihood of future depredation. The Court was informated that the Government did not intend to kill the deer because of present knowledge of depredation, but merely to gather information as the basis for a study. It has been stipulated that the State of New Mexico has offered to provide the defendants with state permits authorizing the killing of the deer, and that the defendants have refused the offer.

As mentioned, defendants contend this is, in reality, an unconsented-to suit against the United States. In this regard, the Court is cognizant of the rule that an officer of the United States, such as the Secretary of the Interior, is immune to suit in his official capacity when the suit is, in effect, one against the United States. However, there exists an exception to the rule where there are allegations that the officer's actions exceeded his statutory authority. Actions of an official that exceed his authority are not actions of the United States, and in such case, the doctrine of sovereign immunity does not apply. *Malone* v. *Bowdoin, 369 U.S. 643; Pan American Petroleum Corp. v. Pierson, 234 F. 2d 649 (10 Cir., 1960); Frost v. Garrison, 201 F. Supp. 389 (D. Wyo., 1962)*. In the instant case, plaintiff alleges that defendants are without authority to do the arts complained of, and the Court concludes that the doctrine of sovereign immunity does not preclude this action.

In the alternative to the contention that the defendants have exceeded their authority, plaintiff alleges that any such authority found to exist is clearly unconstitutional. Should it be determined that defendants were acting within their statutory authority, and that a substantial question of constitutionality with respect to the statute, or statutes, challenged exists, the Court would initiate the convening of a three-judge panel to hear the matter. *Ex parte Poresky, 290 U.S. 30, and cases following.* However, insofar as the problem is one of statutory construction, and the constitutional question is not reached, the parties and the Court are in agreement that the case is not one appropriate for adjudication by a three-judge court.

The parties are apparently in agreement that the United States has not acquired exclusive jurisdiction over the Carlsbad Caverns National Park. If the Federal Government possessed exclusive jurisdiction over this area, a different problem would be presented. See, for example, Chalk v. United States, 114 F. 2d 207 (4 Cir., 1940), Cert. denied, 312 U.S. 679. No evidence to the contrary having been introduced, the Court concludes that the land in question was not acquired under circumstances which authorize the United States to exercise exclusive jurisdiction, and that New Mexico has not ceded exclusive jurisdiction over the area to the Federal Government. From this conclusion, it follows that the authority of the Federal Government upon the Carlsbad National Park is not absolute. The question then remains whether Congress has provided the Secretary with the authority that he now asserts. If the asserted authority exists, State Law that is inconsistent therewith must fall.

According to the law of the State of New Mexico, the State Game Commission is charged with the responsibility of managing, controlling, and of regulating the hunting of all resident species of wildlife within the state. The defendants are charged by federal law with the responsibility of managing and controlling federal lands in the state, including the area known as Carlsbad Caverns National Park.

In accordance with a program planned by the National Park Service, the defendants notified the New Mexico State Game Commission that they intended to issue federal permits to persons selected by them authorizing the killing of fifty deer in the Carlsbad Caverns National Park. The killing would take place out of the New Mexico deer hunting season, and the consent and cooperation of the Game Commission would not be obtained. Thereafter, certain of the defendants were issued such permits by another of the defendants, and fifteen deer were killed. Pending a determination of their rights to continue, defendants have temporarily abandoned the program.

The parties' stipulation includes facts already recited, and makes reference to an affidavit filed in this case by the Director of the National Park Service in describing the program which is underway on Carlsbad Caverns National Park. The Director states that the federal officers are conducting studies concerning the "Dry Season Food Habits of Deer" within the Carlsbad Caverns National Park, and he concludes that—

"(T)hese research programs are absolutely necessary for proper management and administration of Carlsbad Caverns National Park in order to fulfill the responsibilities and obligations of the Secretary of the Interior and his delegated agents to conserve the scenery, natural and historic objects, and wildlife of the park; and that this research project is required in order that reliable scientific information may be gathered and used as a basis for other decisions affecting the management and administration of the area for the purpose of preserving and protecting the park lands from injury or damage."

The responsibility of administering, protecting, and developing Carlsbad Caverns National Park is placed with the National Park Service, subject to the provisions of Title 16, Sections 1 and 2–4 of the United States Code. 16 U.S.C. § 407a. By the terms of Section 1 of Title 16, the National Park Service is obligated to implement the fundamental purpose of the national parks. This fundamental purpose is "to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." 16 U.S.C. § 1. The defendants assert they are conforming with this directive in conducting their present study. They rely for their authority, as well, upon Section 3 of Title 16, which authorizes the Secretary to "provide in his discretion for the destruction of such animals and of such plant life as may be detrimental to the use of any of said parks. . . ."

Section 3 of Title 16 is clearly inapplicable in the present situation. No showing has been made that the deer involved are detrimental to the use of the park, and indeed, defendants

make no such claims. It is the opinion of the Court that the Secretary's authority under this section must be predicated upon such a finding.

The question remains whether the board mandate contained in Section 1 includes the authority the defendants have asserted. The Court has concluded that this section does not include such authority. Reading Section 1 of Title 16 as broadly as defendants contend it should be read would render Section 3 unnecessary, as the authority to order the destruction of wildlife "as may be detrimental to the use" of national parks would be provided without the specific authorization found in Section 3. It seems to the Court an unreasonable conclusion that Congress authorized an activity in Section 3 that was already permitted by Section 1. The conclusion that Congress intended the Secretary's authority to be proscribed by the conditions set forth in Section 3 seems the more logical to the Court.

Defendants rely in part upon Hunt v. United States, 278 U.S. 96 (1928). It seems to the Court that the defendants' reliance is misplaced, however, for that decision is distinguishable from the present case in more than one respect. In *Hunt*, the Supreme Court permitted the destruction of deer on a national forest and game preserve by United States officials, noting (1) that the deer were in such excess numbers "that the forage is insufficient for their subsistence" and the deer "have greatly injured the lands in the reserves by over-browsing upon and killing valuable young trees, shrubs, bushes and forage plants," and (2) observance with the game laws of the State "would have so restricted the number of deer to be killed as to render futile the attempt to protect the reserves." 278 U.S. 96, 99, 100. Neither of the recited factors is present in this case. No depredation is known to be occurring, and New Mexico has offered to cooperate with the Federal officers. Clearly, *Hunt* does not authorize the killing of deer for the purpose of conducting a study. No one doubts the Government's authority to protect its lands, and it seems to the Court that *Hunt* merely reaffirms that proposition, as does Section 3 of Title 16, U.S.C.

Section 53–3–23 of the New Mexico Statutes provides in pertinent part as follows:

"The state director may issue permits to any person to . . . kill . . . game . . . at any time when satisfied that such person desires the same exclusively . . . for scientific . . . purposes."

The Court concludes that Sections 1 and 2–4 of Title 16, U.S.C., do not authorize the destruction of wildlife upon the park for the purposes outlined in the Director's affidavit. The Court further concludes that enforcement of Section 53–3–23, New Mexico Statutes Annotated, quoted above, will not interfere with the Secretary's task as defined in 16 U.S.C. § 1. For these reasons, defendants must comply with Section 53–3–23, N.M.S.A., if they intend to pursue this study further.

This Court has jurisdiction to enjoin acts of officials which are unsupported by statutory authority. Leedom v. Kyne, 358 U.S. 184; Frost v. Garrison (D. Wyo., 1962) 201 F. Supp. 389; Harper 1. Jones (10 Cir. 1952), 195 F. 2d 705, and cases cited therein. Accordingly, it is the opinion of the Court that the defendants should be restrained and enjoined from the further killing of wildlife within the boundaries of Carlsbad Caverns National Park for the purpose of conducting a research study, unless they first secure authority for their acts by compliance with State Law.

This opinion shall constitute the Court's findings of fact and conclusions of law, as required by Rule 52(a) of the Federal Rules of Civil Procedure.

At Albuquerque, this 12th day of March, 1968.

H. VEARLE PAYNE,
U.S. District Judge.

ORDER FOR ADJOURNMENT FROM FRIDAY TO MONDAY

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that when the Senate completes its business tomorrow, it stand in adjournment until 12 noon on Monday next.

The PRESIDING OFFICER. Without objection, it is so ordered.

OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1967

The Senate resumed the consideration of the bill (S. 917) to assist State and local governments in reducing the incidence of crime, to increase the effectiveness, fairness, and coordination of law enforcement and criminal justice systems at all levels of government, and for other purposes.

Mr. THURMOND. Mr. President, the proposed legislation which we are discussing is prompted by a growing crisis in America: The crisis of crime. Crime is no longer a distant problem which most of our citizens read about or see on television. Increasingly, crime affects the lives and habits of a growing number of the American people. This effect which crime has on society is twofold: First, the number of citizens actually victimized by crime is growing.

I have newspaper articles from the Washington Post of yesterday and today. I would like to read these articles to the Senate:

"SHOOT HIM," YOUTHS CRY IN HOLDUP: A REPORTER'S FIRST-PERSON ACCOUNT

(By Martin Weil)

"How much?" I asked.

He glared and put a silver-plated revolver against my stomach.

"All of it," he said, and his friends laughed.

I was held up last night at Vermont Avenue and R Street nw., as I waited for a taxi to take me back to the office from an assignment.

This is how it happened:

I left the YMCA building on 12th Street between R and S Streets nw. about 9:25 p.m. and started looking for a cab.

As I walked down the long, lonely block of Vermont Avenue beside a playground fence, I called to one or two taxis, but they were far off and occupied.

I turned to see if any were coming from behind. There were no taxis, but there was a group of youths, sauntering down the block toward me.

I kept walking.

The more I turned to look for the cab that wasn't coming, the more they seemed to laugh and the faster they seemed to approach. I wanted that cab to come.

I stopped at Vermont and R. I was going to catch a cab right there.

The youths reached the corner seconds after I did.

The leader wore an orange windbreaker and a thin mustache. He was no more than 16, and he seemed pleasant enough.

"Got a match?" he asked. I didn't. "Got a cigarette?" No luck.

"Got any money?"

I sighed. "How much?"

Then the revolver was in my stomach. "All of it."

"All right," I said, "All right," trying to be agreeable. They didn't wait. One grabbed me around the neck from behind. I didn't resist as he pulled me to the pavement.

"Shoot him," one youth called, giggling, as the leader stood over me with the gun. "Shoot him."

I didn't know if he would or wouldn't. I was scared and I won't forget it. I lay very limp and let them pull the wallet containing about $45 out of my pocket and the watch off my wrist. Then, they ran down the street, laughing.

Just across the street, a woman screamed "He's being robbed!" Several people near her began laughing.

After the youths ran away, I got up and began walking toward the office. I never did find a cab.

LOOTED SHOP OWNER SLAIN IN GUN DUEL

(By Alfred E. Lewis)

A 59-year-old Washington liquor store owner, whose brother was killed in a liquor store holdup in 1964, was shot and killed in a holdup or looting yesterday afternoon.

Benjamin Brown was shot fatally at about 4:30 p.m., yesterday in Brown's Service Liquor Store, 1100 9th st. nw. His older brother, Lewis Brown Sr., 72, owner of a liquor store at 1432 New Jersey ave. nw., was shot to death in a holdup on Oct. 29, 1964.

Benjamin Brown, who lived at 1900 Lyttonsville rd., Silver Spring, died in an ambulance on the way to George Washington University Hospital shortly after the shooting yesterday. He had been shot once in the chest.

His older brother was shot to death with a .45-calibre pistol wielded by a man who terrorized customers and escaped with $2400. The gunman was later tried, convicted and drew a life term in the slaying.

In yesterday's holdup, Police Insp. John Williams said witnesses told detectives that more than a dozen youths, ranging in age from 11 to 20, burst into Brown's store shortly before 4:30 p.m.

Police gave this account:

A man who seemed older than the others went directly to the cash register and began pounding the keys with his fist and demanding that someone open it for him.

Brown, standing behind the short end of an L-shaped counter, drew a .38-caliber revolver from his pocket and as he did so the man at the register drew a gun from his pocket and fired once, felling Brown. Brown got off two shots, police said, but it could not be determined if they hit anyone.

All the intruders fled at the outset of the gunfire, police said, and Brown's bullets may have gone out the open door. Three others, all of Brown's employes, were in the store at the time, but were uninjured.

Williams said Brown's store was looted during the rioting April 5 by a gang who smashed all the windows and stripped the shelves of stock that had been only partially replaced.

Brown had operated the store for about 25 years, police said. He remained closed for several days after the looting, and friends said he was uncertain about resuming the business at the site.

As far as could be determined, nothing was taken yesterday from the store, police said.

The police lookout for the gunman described him as a Negro about 25 years old. He was wearing a black cap, a blue jacket and a yellow shirt. The lookout described him as armed and dangerous and said he may be wounded. It urged all doctors and hospitals to be on the alert for the suspect.

ROWDY GROUP OF AREA YOUTHS SEVERELY BEAT DISTRICT OF COLUMBIA POLICEMAN

(By Michael Drosnin)

On Saturday night, Marshall E. Lohr, 37, a District of Columbia policeman attached

to the canine squad, was walking his police dog near his home in the Prince George's community of West Lanham.

He approached a group of teen-agers who had tried to crash a birthday party in his block, and, who, he said, were shouting obscenities. Lohr told them to "tone down."

According to Lohr, the youths retorted, "We know you're a cop and we know that's a police dog."

Lohr said he then took the dog back to his house because he "wasn't looking for any trouble," and returned to the group of teen-agers, repeating his request.

"The next thing I knew," said Lohr, "I was lying on the ground and a neighbor told me to hold still. Then the ambulance came."

Lohr was taken to Prince George's General Hospital where he was in satisfactory condition yesterday with a broken nose, a fractured jaw and a concussion.

According to Prince George's police, he was attacked by two of the teen-agers he had told to quiet down, a 16-year-old and a 17-year-old from nearby Woodlawn. Both have been charged with assault with intent to maim and have been released to their parents.

The youths were arrested at Prince George's Hospital where the 16-year-old, a 6-footer who weighs 245 pounds, had gone to get a cut hand treated.

Lohr's wife, Elizabeth, was standing in the hospital hallway outside an emergency room where her husband lay unconscious.

Two youths, she said, were sitting a short distance away laughing. Then one looked into the room where Lohr was awaiting treatment and said, "Oh boy, he's really hurt, isn't he."

When Mrs. Lohr identified herself to the teen-agers she said they answered, "We're going to get your house next." A few minutes later Prince George's police arrived and took the youths into custody, acting on information supplied by neighbors.

According to Sgt. Lohr's Metropolitan Police superiors, he was out of uniform and unarmed when he confronted a group of five youths near his home at 5405 76th ave. The group, four boys and one girl, ranged in age from 15 to 17.

Lt. George Greggs of the Metropolitan police said that the youths told Lohr, "You wouldn't be so big without that dog," and then called him a "nigger-lover."

Wanting to avoid trouble, Lohr according to Greggs, gave the dog to his wife who had come out to see what was happening.

When he returned to the teen-agers, Greggs said that one of the youths hit Lohr and knocked him to the ground and then kicked him while he was down. Neighbors said the girl screamed, "You've killed him."

As the youths ran back to their car, neighbors began to converge on the scene. The car, they said, sped away into a dead end street and then came back without its headlights on toward Lohr, who was lying in the intersection. Several neighbors pulled Lohr onto the sidewalk as the car sped away, the youths shouting obscenities out of the windows.

Lohr has served in the District Police Department for 14 years and has lived in the West Lanham neighborhood for seven. Neighbors describe him as "an easygoing guy who doesn't bother anyone."

One neighbor, John Moye, 5406 76th ave., said that Lohr walks his police dog through the area every night. "He's like our security patrol," said Moye.

From his hospital bed Lohr commented to a reporter, "I made it through the war and got injured in the peace."

He was referring to the fact he came through the Washington riot without a scratch only to be attacked and beaten in front of his Prince George's home in what his wife describes as a "quiet, quiet section of very nice families."

Mr. President, as we can see, one does not have to resort to back issues of the papers to find the evidence of the serious presence of crime in our society. The current press provides an excellent chronicle of the violence which is becoming a tragic part of American life.

That this violence is increasing can be seen in the crime reports of the FBI:

During the period from 1960 through 1966, the number of criminal offenses per 100,000 population increased 48 percent.

During this same period, the rate of crimes of violence—that is, murder, forcible rape, robbery, and aggravated assault—went up 37 percent.

Crimes against property—which include burglary, larceny $50 and over, and automobile theft—went up 50 percent.

For the first three months of 1967, crime increased 20 percent over the same period in 1966.

The second serious result of the growth of crime in America is the effect on the lives of all citizens, regardless of whether or not they have been victims of crime. Americans are having to learn to live with fear: Fear for their own personal safety, and that of their families; fear for the security of their possessions—their automobiles, the contents of their homes and of their pocketbooks.

The lives and habits of our people are forced to be accommodated to this fear. Recent surveys have shown that an ever-growing number of Americans are making precautions against criminals a part of their daily lives. They stay off the streets at night. They keep firearms and watchdogs as protection against intruders. They quit speaking to strangers and to young people in groups. They move to a new neighborhood, or wish that they could. They leave the cities in droves for temporary shelter because serious riots break out.

Congress must act. Steps must be taken to reverse this trend. America must be made safe for Americans.

The bill before us is the Omnibus Crime Control and Safe Streets Act. Its purpose is to help win the war on crime. This is a noble purpose. Congress certainly shares that goal. But let us be sure that what we pass is effective legislation toward this goal of law and order. Let us enact a law which contains every strong, effective measure available to us. Let us enact a law that contains nothing which would be inconsistent with the quality of life we are seeking to preserve.

Mr. President, a further warning is in order: This bill by itself will not make our streets safe. In fact, it will do little in this direction unless existing laws are properly enforced at all levels of government. The mayors of every city in America need to stand firm and aggressively enforce the law; the sheriffs of every county need to pursue criminals vigorously and see that they are apprehended; every prosecuting attorney must act to see that indictments are followed by effective prosecutions; every Governor needs to give his strong support to local law enforcement officials, needs to supply the needed leadership in the war on crime. Those in the judicial branch must temper their concern for the accused with a proper concern for the victims and for society.

Everyone concerned with public safety and public order must work to restore respect for the law. For those who do not and will not respect the rights of others, the threat of swift punishment commensurate with their deeds should be made to serve as a deterrent to criminal activity.

The bill before the Senate contains four titles:

Title I—Federal aid to State and local law enforcement agencies;

Title II—Congressional action to restore time-tested procedures in criminal law;

Title III—Provision for court ordered electronic surveillance;

Title IV—Regulation of interstate transportation and sale of firearms.

These titles contain much that is good, that is needed, and that will be effective. However, in many respects this bill would be strengthened by adding provisions which are not included. In some cases, the bill would be made more effective by eliminating certain provisions.

Mr. President, my basic views on title I are expressed in the report in which my distinguished colleagues, Senator DIRKSEN, Senator HRUSKA, Senator SCOTT, and myself presented our combined individual views on three titles. Let me quote from the report beginning on page 226:

Although we are in substantial agreement with many of the provisions of Title I which authorize federal assistance to state and local law enforcement agencies, we are not satisfied with the title as reported from the committee. We offered three major amendments to the measure in full committee which were narrowly defeated. The first amendment included the so-called block grants provisions similar to those of the House-passed bill. The second amendment would reinstate the provisions of the Senate subcommittee-approved bill in which the Law Enforcement Assistance Administration would be independent of the control of the Attorney General. Finally, we attempted to remove the provisions of the committee bill which provide for federal supplements to policemen's salaries.

We will offer these amendments for consideration by the Senate.

The overriding deficiency of the committee bill is the failure to retain the so-called block grant provisions of the House-passed bill. We offered amendments to reinstate the block grant features in the full committee, but they were defeated by a one-vote margin. We will offer them again on the floor of the Senate.

It is the purpose of these amendments to insure that federal assistance to state and local law enforcement does not bring with it federal domination and control nor provide the machinery or potential for the establishment of a federal police force. Frankly, we fear that S. 917, without such provisions, could well become the vehicle for the imposition of federal guidelines, restrictions and eventual domination.

Our block grant amendments would revise Parts B and C of Title I, to adopt, with some changes, the provisions of Titles II and III of the bill as it was passed by the House of Representatives. The amendments provide that federal financial assistance to state and local law enforcement be channeled through "state planning agencies" created or designated by the several states. These moneys would be allocated by the state authority to state and local enforcement activities pursuant to comprehensive plans which must be approved annually by the federal Law Enforcement Administration. Each state agency

would determine its own priorities for expenditures consistent with its comprehensive plan.

Mr. President, the block grant concept is completely consistent with the principles of our Federal Republic; it is very necessary if we are to maintain a workable Federal-State partnership to fight crime and to restore domestic tranquility to this Nation. We do not need bureaucrats in Washington telling local law-enforcement officials what type of programs are needed to enforce better local laws. One of the purposes of title I is to "encourage States and units of general local government to prepare and adopt comprehensive plans based upon their evaluation of State and local problems of law enforcement."

I believe this purpose could best be accomplished if the grants were made to the State planning agencies in order to insure a coordinated effort in each State. On page 228 of the report, we stated:

The states are ready to assume their responsibilities for action. In 1966 when limited federal funds were offered to the states to establish planning commissions to combat crime, 16 states established these commissions, and eight others have had applications pending with the Justice Department for varying lengths of time. During the same 18 month period, the Justice Department with the active cooperation of national organizations representing cities and counties, only managed to approve a total of 11 grants to both cities and counties, plus eight grants for the District of Columbia, out of a potential of over 18,000 cities and 3,000 counties. The published Justice Department facts show that the states more than other jurisdictions are assuming their responsibilities. In all, more than one-half of the states have already received state planning grants. Several more have applications pending.

Within the last month, 47 Governors meeting in Washington unanimously recommended that Congress push forward with these bills, but with due regard for required statewide planning and project coordination, including provisions for local officials to participate with the state officials in the development of these programs. The National Association of Attorneys General recently passed a resolution in support of the Law Enforcement and Criminal Justice Act as amended and passed by the House. The unanimous judgment of these state officials plus a substantial majority of the members of the House of Representatives is that if creative federalism is to become workable federalism, then it must move away from direct project grants to local governments that would bypass state financial and technical assistance related to the solution of the same problem. Seldom does the solution of a problem involve only one functional area; in most cases other functional elements are directly related.

Another area of concern to me is the present provision establishing the three-man Law Enforcement Assistance Administration under the general authority of the Attorney General. To my way of thinking, it would be much better to have the administration as an autonomous unit so that the assistance program would be administered impartially and free from political pressure. I believe it is imperative that title I be amended to include the language which appeared in the subcommittee bill which provided:

In the exercise of its functions, powers, and duties, the Administration shall be independent of the Attorney General and other offices and officers of the Department of Justice.

We hear a lot of talk about not wanting a national police force, but now is the time to legislate in a way to prevent the need for an ever-expanding Department of Justice. The Law Enforcement Assistance Administration should be made independent of the direct supervision of the Attorney General.

Mr. President, there is one more major area of concern in title I which I wish to discuss. I am disturbed about the ominous possibilities inherent in the use of Federal funds to supplement the salaries of State law-enforcement officers. I wish to read again from the individual views on page 230 of the report:

The Administration's original proposal to Congress in early 1967 contained a feature allowing up to one-third of each federal grant to be utilized for compensation of law enforcement personnel. In the hearing record of both the House and Senate Judiciary Committees, this provision proved to be quite controversial. When the House Committee reported the bill, the provision for salary support was deleted. Commenting on this action, the committee report on page 6 stated:

"The committee deleted all authority to use grant funds authorized by the bill for the purpose of direct compensation to police and other law enforcement personnel other than for training programs or for the performance of innovative functions. Deletion of authority to use Federal funds for local law enforcement personnel compensation underscores the committee's concern that responsibility for law enforcement not be shifted from State and local government level. It is anticipated that local governments, as the cost for research, innovative services, training, and new equipment developments are shared by the Federal Government in the programs authorized in the bill will be able to devote more of their local resources to the solution of personnel compensation problems. The committee recognizes that adequate compensation for law enforcement personnel is one of the most vexing problems in the fight against crime."

We wholeheartedly subscribe to the House committee's view. There is indeed a grave concern that responsibility for law enforcement not be shifted from the state and local levels.

The Senate Criminal Laws Subcommittee also deleted a similar provision by an overwhelming vote, but subsequently a somewhat modified salary provision was reinstated. In modified form, up to one-third of each grant could be made available to pay one-half the cost of salary increases for law enforcement personnel. Even with this modification, we must strongly oppose the provision. This is not because we are indifferent to the low pay of the nation's law enforcement officers. It is because we fear that "he who pays the piper calls the tune" and that dependence upon the federal government for salaries could be an easy street to federal domination and control.

Mr. President, we are all deeply concerned because in some areas of our country law officers are not adequately compensated for their dedicated service, but we also know that the other grants provided by this bill will bring relief to the heavy demands on municipal and county revenue, thus freeing some local funds for salary increases. I cannot emphasize my opposition to this provision enough; I certainly hope that it will be deleted.

Mr. President, title II of S. 917 is legislation which has been needed for some time. It would restore the test for admissibility of confessions in criminal cases to that time-tested and well-founded standard of voluntariness. It would exclude from review by the Supreme Court the question of voluntariness of a confession when this aspect of the case has already been settled by the highest appellate court in the State. This provision would set aside the inflexible and technical rules established in the Mallory—*Mallory* v. *U.S.*, 354 U.S. 449—Escobedo—*Escobedo* v. *Illinois*, 378 U.S. 478—and Miranda—*Miranda* v. *Arizona*, 384 U.S. 436—decisions. I addressed myself to this problem in my report to my constituents on April 1 of this year. In that report I said:

CURBING THE COURT

More and more citizens are asking what can be done to curb the Supreme Court. With every succeeding "decision Monday," the Court relentlessly slashes away at questions of national policy—questions that ought to be decided by political machinery. The Court has made itself a nine-man legislature responsible to no one.

As early as 1803, the Supreme Court established its authority to declare an act of Congress unconstitutional; since then, the Court has reasserted this right at least 80 times. Congress has never seriously challenged the Court in any of these issues.

The Supreme Court has a duty to declare a law unconstitutional, if the law actually conflicts with the plain meaning of the Constitution. However, the controlling factor in interpreting the Constitution should be the historical intent of the Framers, insofar as that intent may be discovered. The body of historical documents is adequate to set forth the intent of the Framers, both as to the Constitution and as to its Amendments—if the Supreme Court wished to discover that intent.

But it appears that the Supreme Court is not interested in discovering what the Constitution meant to those who wrote it. The theory of the so-called "living Constitution" holds that new facts and new situations can change the meaning of old words. Nothing is more absurd. The Constitution means today exactly what it meant in 1787, when it was written, or it means nothing at all.

As the Supreme Court renders decision after decision that remakes America, the words of Thomas Jefferson are more significant, when he said: "There is no danger I apprehend so much as the consolidation of our government by the noiseless, and therefore unalarming, instrumentality of the Supreme Court."

The only power Congress has chosen to exert over the Court is the power of confirming new justices, and that power has been exercised in the affirmative. The power of impeachment has been seldom used; within the overall Federal court system, only four judges have been impeached—and none from the Supreme Court.

The Constitution provides another avenue of relief, which Congress could take by simple legislation. Article III, Section 2 sets up the authority for Congress to limit the jurisdiction of the Court in any field Congress wishes. In effect, Congress could easily say to the Court: Thou shalt not adjudicate in the fields we have designated.

Mr. President, the decisions of the Supreme Court have been criticized extensively in the past few years. Many of these attacks have come from members of the Court themselves. Justice Hugo Black recently said:

I deeply fear for our constitutional system of government when life-appointed judges can strike down a law passed by Congress or a State legislature with no more justification than that the judges believe the law is "unreasonable."

In a 1966 dissent, Justice Byron White said:

The Court has not discovered or found the law in making today's decision . . . what it has done is to make new law and new policy . . .

Justice John Harlan has described recent decisions as "nothing less than an exercise of the amending power by this Court."

Mr. President, there was an article in the July 1967 edition of Reader's Digest which discussed the growing concern of the American people about the liberal trend of the Supreme Court. The writer began the story by saying:

Fifty-two percent of the American people rate the Supreme Court's performance as "only fair" or "poor" according to a recent Louis Harris opinion poll.

The article went on to note the power of Congress to regulate the appellate jurisdiction of the Court:

Article III empowers Congress to make "exceptions and regulations" to the Court's appellate jurisdiction. Thus the Constitution explicitly makes our elected legislators the supreme judges—by simple majority vote—of what types of cases the Court may decide. Says Herbert Wechsler, Columbia Law School professor and director of the American Law Institute, "The plan of the Constitution was quite simply that Congress would decide from time to time how far the federal judicial institution should be used. Congress has the power, by enactment of a statute, to strike at what it deems judicial excess."

Thus the judges are not the sole arbiters of the Constitution. The framers of the Constitution laid on Congress a duty to define the rights it provided, and to act as a counterweight to the Court.

The article concluded by stating:

The founding fathers named Congress as the referee to guard the bounds beyond which the Justices should not go. The time has come for our elected representatives to blow the whistle.

The time has come for our elected representatives to "blow the whistle."

Mr. President, I ask unanimous consent that the article entitled "Is the Supreme Court Really Supreme?" be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. THURMOND. Mr. President, to my way of thinking, title II is one of the most important pieces of legislation to be presented to the 90th Congress. If we are to have respect for law and order and if our people are going to regain their confidence in our process of justice, then we need to change the inflexible and technical rules established by the Miranda decision. This and other decisions of the Court have eroded the citizen's respect for law and have diminished the criminal's fear of punishment. Both the courts and the correctional process are weakened when technicalities prevent the conviction of admitted criminals.

Mr. President, no one wants to see an innocent person convicted and no one wants to see a man beaten in order to obtain a confession, but these principles do not justify the decision of the Supreme Court in the Miranda case. The constitutional requirement of "due process" does not require that any confession is inadmissible which was not obtained by conforming to the Court's highly technical requirements. Society has an interest in the matter as well; and society has a very deep interest in a procedure which will arbitrarily free an admitted rapist to further prey on innocent victims. This has been the case where the State has not carried an unrealistic burden placed upon it by a 5-to-4 majority of the Supreme Court far removed from the real question of voluntariness.

The ill effects of the Miranda rule can be fully understood only by studying its unfortunate influence on the lower courts. I wish to read an editorial which appeared in the Greenville Piedmont, April 22, 1968, Greenville, S.C. This editorial points out the absurd travesties of justice resulting from this decision of the Supreme Court. The editorial is entitled "The Law Is a Ass."

According to the Tenth District Court of Appeals, it is not enough for police to advise suspects of their right to an attorney.

The case under consideration involved three persons arrested in Kansas on a charge of passing a counterfeit $20 bill. Arresting officers dutifully informed the three of their right to an attorney.

But the appeals court threw out the statements the trio then made, on the grounds that their constitutional rights were not sufficiently guarded. They had made no specific denial that they wanted an attorney, the court pointed out.

The federal district attorney for Colorado, whose office prosecuted the case, is sending out the word that law enforcement officers had better wring a clear "yes" or "no" from suspects hereafter on the matter of consulting an attorney.

That doesn't solve the real problem, however. How will the police persuade the suspect to say aye or nay, when he knows silence will wreck the whole case?

Mr. President, I might pose another question. What if the policeman does manage to get a definite waiver from the defendant? What would prevent the Supreme Court from saying that the waiver was coerced? Would there be any way to know that the Court would not say that the defendant had waived his waiver? This is an intolerable situation which should be corrected and it should be corrected now by this Congress. I believe the State courts can properly insure the defendant a fair trial on the question of voluntariness of a confession in line with the procedures set out in section 701 of title II.

I believe some of the comments by the distinguished chairman of the Subcommittee on Criminal Law and Procedures need to be repeated. I am reading from the RECORD of May 1 beginning at page S4751:

I wish to say with respect to this bill, and these vital issues that we who are going to cast our votes on, are going to aline ourselves, either wittingly or unwittingly, either deliberately or unthoughtfully, on one side or the other—enforce the law, convict and punish the guilty, or support and sustain and perpetuate rules, so-called, that are not in the Constitution, that inure to the benefit of those who would destroy our society; who would rape the innocent womanhood of our country; who would murder the innocent citizen of our community; and who would rob and pillage and plunder. We are going to get on one side or the other.

Prior to the Miranda majority opinion the Court had consistently held, as so clearly demonstrated by Mr. Justice White in his dissent, that "It is not essential to the admissibility to of a confession that it should appear that the person was warned that what he said would be used against him, but on the contrary, if the confession was voluntary, it is sufficient though it appears that he was not so warned."

I would now like to discuss the need for the procedures called for in title III of S. 917. We have tolerated for too long the existence of organized crime and its preying on the citizens of our Nation and have permitted ineffective enforcement of the existing laws designed to combat organized crime. On page 225 of the report, which discusses the minority contributions to this bill, we read:

The electronic surveillance title will provide an essential tool to law enforcement officials in waging all-out war against organized crime. Yet, the right of privacy of our citizens will be carefully safeguarded by a scrupulous system of impartial court authorized supervision. Such court supervision will monitor and control use of these techniques by law enforcement officials. A broad prohibition is imposed on private use of electronic surveillance, particularly in domestic relations and industrial espionage situations.

Special emphasis on organized crime was essential because of the tragic lack of progress made in recent years in bringing the kingpins of organized crime before the bar of justice.

Those who are opposed to the discriminate use of electronic surveillance always interpose the old scare argument that this type of law will allow widespread monitoring of private conversations. This point is very appropriately discussed in the committee report on page 72:

In his testimony before the subcommittee, District Attorney Frank Hogan referred to a study conducted by the New York Legislature which . . . shows that the danger that law enforcement officials may listen in on conversations that do not concern some criminal enterprise is exceedingly remote. According to Mr. Hogan, starting in 1955 a joint legislative committee conducted a 5-year study in the State of New York inquiring particularly into possible abuses by law enforcement officers. In its report the committee explicitly declared that no abuses whatever by any district attorney had been found in the use of the wiretapping privilege. Quite the contrary is true. The committee concluded that the system of legalized telephonic interception had worked well in New York for over 20 years, that it had popular approval, and that it enjoyed the overwhelming support of New York's highest State officer, executive, legislative, and judicial. There was unanimous agreement that law enforcement in New York had used this investigative weapon fairly, sparingly, and with the most selective discrimination. Law enforcement officers simply have too much to do to be listening in on conversations of law-abiding citizens. Available manpower just does not permit such abuse. It is idle to contend otherwise.

The argument for the provisions of title III is succinctly stated in an editorial in the Evening Star of April 30, 1968. Contrary to the views of other papers and those who oppose police use of this effective tool, the editor stated it in a very clear-cut way:

We think the sections dealing with the use of wiretaps and electronic listening devices should also become law. It simply is not

true to say or to suggest that these provisions would authorize the police to eavesdrop, for example, on bedroom conversations between husband and wife. This is absolute nonsense and the senators surely must know it. What is authorized is the use of these devices in the investigation of a few specified major crimes, murder, extortion, bribery, rape and robbery being among them. Installation of a wiretap or a bug would have to be authorized and supervised by a court, and could be used only for a limited period of time.

If these devices are being used and are essential in national security cases, and the President and the Attorney General say they are, why should they not be used, subject to safeguards, in the case of other serious crimes?

Mr. President, while I wholeheartedly agree with the broad outline of title III, I favor an amendment to eliminate the distinction in the kinds of cases in which electronic surveillance may be used and I will support an amendment which will eliminate from this title the provisions which now set Federal standards for State law enforcement.

Title IV prohibits interstate mail-order sale of all firearms other than rifles and shotguns. It prohibits all sales of handguns to purchasers under 21 and to nonresidents of the State. It requires all gun dealers to be licensed by the Federal Government and to keep records of the acquisition and disposition of their stock.

The tempo of the demands for some type of gun legislation has been increasing this year. Rising crime rates have led to more heated argument about the need for gun control by the authorities, State or Federal. The debate today is whether the Federal Government should provide assistance for State laws on the subject, or set up substantive legislation of its own.

I believe, as I have indicated many times in the past, that Congress has no authority to prevent people from buying and owning firearms. The second amendment to the Constitution provides that "the right of the people to keep and bear arms, shall not be infringed." These prohibitions are directed against the National Government, but not against the States. The people of each State, therefore, can regulate the sale of firearms without running afoul of the Constitution.

Most of the States have laws designed to prevent firearms from being sold to juveniles, insane persons, and people with criminal records. The State laws vary in strictness and enforcement, according to the needs of each State. The New York law, for instance, requires that a person apply for and be granted a permit from the State as a prerequisite to purchasing or possessing a handgun. In most States, however, control over gun sales is exercised by licensing the merchants who sell firearms, and by requiring the sellers to adhere to the law in order to keep their licenses.

In recent years, State laws governing the sale of firearms have been increasingly circumvented by mail-order sales of weapons. Dealers in weapons located outside State boundaries often do not comply with State laws restricting sales. Guns have been sold through the mail to children, persons of unsound mind, and people with long criminal records. Some irresponsible mail-order merchants sell with impunity to anyone who has the price, since they do not have to obtain a license in the State where the purchaser lives, and are beyond the reach of criminal laws of the State to which the gun is shipped.

The problem is easily solved without overstepping the safeguards of the second amendment. Congress has the power to regulate interstate commerce. Therefore, Congress can make it unlawful to ship firearms in interstate commerce unless the sale is consistent with the law of the State to which the weapon is shipped.

Congress should require the gun seller to obtain from the would-be purchaser a sworn statement that the buyer is not prevented by the law of his home State from purchasing the weapon. This should be coupled with a requirement that the seller, prior to shipping the weapon, send a copy of the sworn statement by registered mail to the chief law enforcement officer of the area in which the would-be purchaser lives. Failure to comply would be a Federal criminal offense.

Legislation of this type would protect the rights of the States and the rights of the people, without working an undue hardship on seller or buyer. In most States, the people feel strongly that law-abiding, sane adults should be permitted to own firearms. If the National Government prohibited the sale of firearms, law-abiding citizens would not obtain firearms, but lawbreakers would. Criminals do not hesitate to obtain firearms illegally. Moreover, they would know that a gun would provide them with a bigger advantage over a citizenry disarmed by law.

Congress should enact legislation to support the laws which the people of each State have passed according to their varying requirements.

I believe title IV should be amended to incorporate this approach, rather than following the overly restrictive provisions which it now contains. I shall cosponsor amendment No. 708 to be proposed by the distinguished Senator from Nebraska, Senator Hruska.

Mr. McCLELLAN. Mr. President, will the Senator yield?

Mr. THURMOND. I yield.

Mr. McCLELLAN. I wish to compliment the able and distinguished Senator from South Carolina for his able address with respect to the pending measure. I want to thank him, too, publicly and for the record for the valuable assistance that he gave and his labors on the subcommittee and the full Judiciary Committee during the processing of this legislation. Without the able assistance of the able Senator and others of our colleagues who serve with us on that committee, and without their dedication and determination to try to do something about lawlessness in this country, there would be no bill on the floor of the Senate today.

I may say to the Senator, as I am sure he well knows, that this bill is not perfect. There are provisions in it that I would change or modify if I were permitted just to write a bill as I would like to have it. I am sure that would be true of the distinguished Senator from South Carolina. But what we have succeeded in doing is bringing to the floor of the Senate, not just a bill that makes a gesture towards strengthening law enforcement, not just a bill that proposes to spend more money to try to eliminate this great evil, this menace, which is upon us, but we have actually brought a bill here that has some action in it, some power in it, some provisions that can be used to throw consternation into the hearts and minds of organized crime and of people who are bent on the pursuit of crime as a livelihood.

Though it is imperfect, we have brought a bill here of some potency. We are giving the Senate of the United States an opportunity to work its will. We are inviting each of our colleagues to come here and participate and contribute and offer amendments and debate them, and help us get the strongest anticrime and the strongest safe streets legislation enacted that it is possible for the wisdom and the courage of this body to produce.

I thank the Senator for yielding to me.

Mr. THURMOND. I thank the Senator for his kindness.

Mr. HRUSKA. Mr. President, will the Senator yield?

Mr. THURMOND. I yield to the Senator from Nebraska.

Mr. HRUSKA. I want to extend my commendations to the Senator from South Carolina for his contribution to this bill, both in the subcommittee and in the full committee, and now, at the outset of this historic debate, in the effort to improve the administration of justice and the law enforcement process of this country. The Senator brings much wisdom to the field, and states it well and persuasively.

It was with some interest that the Senator from Nebraska listened to the observations of the Senator from South Carolina with reference to title III, the so-called wiretapping and electronic surveillance bill, and to that portion of his remarks which related to the bill and the effort to prescribe for the States what they may and may not do in the field of wiretapping.

It has certainly escaped the attention of the Senator from Nebraska that any such authority exists; that there is a supervisory power of the U.S. Congress over the actions of a State which is in fact derived directly from the Constitution of the United States.

Would the Senator from South Carolina be aware of any supervisory power that Congress has over the actions of the States in that connection?

Mr. THURMOND. No, Mr. President; I know of none.

Mr. HRUSKA. There is none that I know of. Is it true that if a State engaged in an effort to pass a wiretapping law, it might well create and fashion something that would be superior to a measure enacted by Congress?

Mr. THURMOND. Yes; I wholeheartedly agree with the Senator from Nebraska, and I believe what he has said is absolutely correct.

Mr. HRUSKA. If by chance or de-

sign there should be a violation of the Federal Constitution by State legislatures in this regard, that would be a problem for the Supreme Court to pass upon; is that not true?

Mr. THURMOND. That is correct.

Mr. HRUSKA. And who are we to presume in advance to circumscribe legislatively the areas within which the States must function, and which they must not exceed, with regard to State wiretapping legislation? It would be presumptuous on our part, would it not?

Mr. THURMOND. That is absolutely correct, and I think the Senator has put his finger right on the problem and you have pointed out the reason for seeking an amendment to this provision.

Mr. HRUSKA. I thank the Senator and again commend him for his contribution.

Mr. THURMOND. I thank the Senator from Nebraska.

EXHIBIT 1

IS THE SUPREME COURT REALLY SUPREME?

(By Eugene H. Methvin)

Recent controversial rulings by the High Bench raise anew the troubling issue: Who is the ultimate arbiter of the Constitution? Our founding fathers provided a foresighted answer.

Fifty-two percent of the American people rate the Supreme Court's performance as "only fair" or "poor," according to a recent Louis Harris opinion poll. "The Justices are stretching the judicial process to try to translate their notion of an ideal society into reality," says Prof. Philip B. Kurland, editor of the University of Chicago Law School's *Supreme Court Review*. From legal scholars to the man in the street, from Congress to the Justices themselves, this most revered of our governmental institutions is today drawing stinging criticism.

Some of the most eloquent protests have come from within the Court itself. In 1962, when the Supreme Court invaded the political thicket of legislative reapportionment, the late Justice Felix Frankfurter denied that the Court had constitutional authority for its move. He accused his colleagues of "a massive repudiation of the experience of our whole past."

In another case last year, Justice Byron R. White charged the Supreme Court with laying down specific rules that have "no significant support" in the history of the Constitution.

Justice John M. Harlan has despairingly proclaimed that recent Court decisions amount "to nothing less than an exercise of the amending power by this Court."

DIRECTION BY DECISION

Repeatedly in recent years the Court has claimed vast new powers to change by judicial decree the shape of our constitutional system. A narrow majority of "activist" Justices, spear-headed by Chief Justice Earl Warren and Justice William O. Douglas, has increasingly taken away from juries and legislatures—the two authentic voices of the people—crucial decisions affecting the order and direction of American life.

Consider the Court's decisions in three vital areas:

School Prayer. The Court has declared that reading the Bible or saying the Lord's Prayer (or even a non-sectarian prayer) in voluntary classroom religious exercises is unconstitutional. It has relied on the theory that the First Amendment ("Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof") somehow requires the Court to impose a wall of separation between religion and any sort of governmental activity.

This notion is "sheer invention," say many distinguished law scholars, among them Dean Erwin Griswold of Harvard Law School. We have, Griswold says, "a spiritual and cultural tradition of which we ought not to be deprived by judges carrying into effect the logical implications of absolutist notions not expressed in the Constitution, and surely never contemplated by those who put the constitutional provisions into effect."

Reapportionment. In one stroke, in June 1964, the Court rendered "unconstitutional" the legislatures of most of the 50 states. The action boldly asserted a judicial power never before claimed. It was based on the 14th Amendment. The dictum that "no state shall deny to any person the equal protection of the laws" means, said Chief Justice Warren, that states cannot adopt "Little Federal" plans, in which one house of the legislature is apportioned like the U.S. Senate, to accommodate other factors (historic, economic or geographic) than population. The states must, instead, elect *both* houses on a "one man, one vote" basis.

Justices Potter Stewart and Tom Clark objected sharply. They called the Court's action "the fabrication of a constitutional mandate," and said, "The Draconian pronouncement finds no support in the words of the Constitution, in any prior decision of this Court, or in the 175-year political history of our Federal Union."

The quarrel arose because many state legislatures had failed to reapportion their districts as people moved from country to city and from city to suburbs. Other states, however, had reapportioned conscientiously—Colorado, for one. In 1962, Coloradans went to the polls to choose between two reapportionment plans, and voted 305,700 to 172,725 in favor of a "Little Federal" plan which gave Colorado's lightly populated western mountains and eastern wheatlands a few more members in the state senate than their population warranted. A majority in every county, including urban Denver, supported this plan.

Justices Clark and Stewart pleaded with the Court to avoid destroying such local initiative and decision. Under the "equal protection" clause, they said, federal courts might properly void any systems which prevent ultimate majority rule. "Beyond this there is nothing in the federal Constitution to prevent a state from choosing any electoral legislative structure it thinks best suited." Colorado simply "sought to provide that no identifiable minority shall be completely silenced or engulfed," an aim that "fully comports with the letter and spirit of our constitutional traditions." The Justices pleaded in vain.

Criminal Procedures. Historically, the administration of criminal justice has been left to the states. The Constitution originally gave the federal government no authority whatever to intervene in ordinary criminal matters. However, the 14th Amendment forbids states to deny a person "due process of law," and the Court has now been using this language as reason to impose a new set of detailed, and controversial, rules of its own making on state law enforcement.

In 1961, for example, five Justices asserted that "due process" requires a state judge to keep physical evidence from the jury if he finds any legal fault with the police search that obtained it. That overruled long-standing Supreme Court decisions and nullified contrary rules in 26 states. Then, in 1964, five Justices prohibited the century-old practice in 15 states of letting the jury decide whether a confession has been coerced. Justice Clark protested: "Dependence on jury trials is the keystone of our system of criminal justice, and I regret that the Court lends its weight to the destruction of this great safeguard to our liberties."

In June 1966, Chief Justice Warren and four fellow Justices imposed on all states a new rule, never before followed in any state: Judges must also keep a confession from the jury unless police can prove beyond doubt that they warned the suspect of his rights, and even furnished him a lawyer throughout interrogation if he wished.

There is mounting evidence that the Court's massive federalization of criminal justice has grievously crippled law enforcement. FBI statistics show that, since the 1961 ruling, the rate at which police are solving reported crimes—a rate which had held steady for years—has dropped by almost ten percent. In New York City, after last year's ruling on interrogations, the proportion of unsolved murders increased by 40 percent. Indeed, the Supreme Court's rulings have compelled the freeing of many apprehended and confessed criminals.

Last September, for example, a woman stood before Brooklyn Judge Michael Kern. She had confessed to taping her four-year-old son's mouth and hands and beating him to death with a broomstick and a rubber hose. Nevertheless, because of the new Supreme Court ruling, her signed confession, the state's only evidence, had to be thrown out.

"Thank you, your honor," the woman said.

"Don't thank me," the judge replied icily. "Thank the United States Supreme Court. You killed the child and you ought to go to jail."

CONFLICTING PHILOSOPHIES

These highly controversial decisions reflect a titanic clash of judicial philosophies in today's Supreme Court. Justices Harlan, White and Stewart are currently the chief representatives of the philosophy of judicial restraint propounded by the great jurist Oliver Wendell Holmes: In a democratic society, judges who never face the discipline of the ballot box must defer to elected legislators in policy choices—and leave it to the voters to discipline the legislators at the polls if the legislators decisions are bad. A judge should declare a legislative act unconstitutional only when he is certain that reasonable men could not disagree. Otherwise, said Holmes, even though the legislators have decided unwisely, a judge is obligated to say, "Damn 'em, let 'em do it!"

On the other side in today's Court, Chief Justice Warren, Justice Douglas and usually Justice Hugo L. Black represent the activist philosophy, or what is sometimes called "political jurisprudence." This school holds that constitutional claims coming to the Supreme Court involve, primarily, conflicting values and interests. There may be no express law relevant to today's conditions. So, in weighing conflicting interests, the Justices must impose their own "social preferences." This philosophy sees the Justices as the modern interpreters of the values expressed in "our living Constitution."

Last year, for example, the Court outlawed Virginia's poll tax—even though it had unanimously upheld a similar tax 29 years before. Even Justice Black denounced this change by judicial decree as "an attack on the concept of a written constitution which is to survive unless changed through the amendment process."

But do we want the Court to be such a lawgiving body? Carried very far, this philosophy would mean in effect abandoning our written Constitution. The High Bench would become not a court of law but a Grand Policy Council, a "Big Brother Club," as one law professor irreverently dubbed the activists.

From the first, men like Thomas Jefferson feared the federal judiciary as a dangerous, fundamentally anti-democratic power. Their fears have proved valid. For half a century (between 1890 and 1937), reactionary "activists" on the Court virtually destroyed the nation's legislative ability to cope with the

industrial revolution, to regulate wages and working conditions, child labor, utilities, railroads, labor-management wars. They nullified 52 acts of Congress and 228 state laws. Ultimately, in the "limited constitutional revolution" of 1937, President Franklin D. Roosevelt, Congress and public pressure persuaded three activist Justices to retire or switch, thus allowing needed social legislation to stand.

Today, the Court is again exhibiting judicial "activism"—only this time designed to impose radical change instead of a freeze. "When in the name of interpretation, the Court *adds* something to the Constitution that was deliberately excluded from it," warns Justice Harlan, "the Court in reality substitutes its view of what should be so for the amending process."

TO GUARD THE GUARDIANS

Who *is* the ultimate arbiter of our Constitution? *Does* the Constitution limit the Justices as well as the legislators and the President?

The founding fathers, understanding the tendency of all men to grasp ever more power, labored to subject every branch of government to checks and balances. They specifically included the Supreme Court. To the ancient question; "Who will guard these guardians?" they answered emphatically, *"The people—through their elected representatives."* And, historically, we have asserted that authority on many occasions.

For example, one powerful check on the Court is the President's power of appointment. In 1870, President Ulysses S. Grant filled two vacancies. The votes of these new Justices made it possible to reverse a recent crucial decision, which declared that Congress had no power to issue paper money. Last June's crucial five-four decision on criminal confessions could not have been made had not President Johnson's first appointee, Justice Abe Fortas, promptly lined up with the activists. Since Justice Clark, a moderate, has recently retired, and since several Justices are over 65, Presidential appointments may completely reshape the Court in the next few years.

The Constitution also plainly specifies two major ways in which Congress can check the Court:

The 14th Amendment—under which the Supreme Court has dictated state legislative apportionments and criminal procedures—specifically names Congress as the protector of the rights it creates. While Congress cannot reverse a Supreme Court decision in a specific case, it *can* write new remedies which the Court is then obligated to apply in resolving such cases in the future. Last year, for example, Chief Justice Warren specifically acknowledged that Congress may, by simple statute, write rules different from those that the Court handed down for police interrogations.

Article III empowers Congress to make "exceptions and regulations" to the Court's appellate jurisdiction. Thus the Constitution explicitly makes *our elected legislators* the supreme judges—by simple majority vote—of what types of cases the Court may decide. Says Herbert Wechsler, Columbia Law School professor and director of the American Law Institute, "The plan of the Constitution was quite simply that Congress would decide from time to time how far the federal judicial institution should be used. Congress has the power, by enactment of a statute, to strike at what it deems judicial excess."

Thus the judges are *not* the sole arbiters of the Constitution. The framers of the Constitution laid on Congress a duty to define the rights it provided, and to act as a counterweight to the Court.

"BEYOND THE BOUNDS"

Though it has acted at other times—for example, in 1868, when it stripped the Court of power to hear appeals in habeas corpus cases—Congress has failed so far to rein in the present Court. In 1964, the House did vote 218–175 to forbid the Court to interfere in state legislative apportionments. This simple majority vote was under Article III, sufficient. But in the Senate, an attempt was made to seek passage of the measure as a constitutional amendment, and it missed—by seven votes—the required two-thirds majority. An amendment to permit voluntary school prayer also failed by a narrow margin. Both goals might well have been accomplished, by a simple majority vote, under Article III and the 14th Amendment.

Some scholars are convinced that the present Supreme Court would have declared any such effort unconstitutional. Others argue, however, that if the Court had gone to that extreme, Congress could then have retaliated by restricting the Court's future jurisdiction in cases of the kind under Article III.

In the absence of such an effort to check the Court, five Supreme Court Justices, in alliance with one third of either House or Senate, are—by "interpretation"—radically amending our Constitution. Yet amendment is supposed to require a two-thirds vote of Congress and ratification by three fourths of the state legislatures.

The great liberal Justice Benjamin N. Cardozo wrote: "Judges have, of course, the power, though not the right, to travel beyond the bounds set to judicial innovation by precedent and custom. Nonetheless, by that abuse of power, they violate the law."

The founding fathers named Congress as the referee to guard the bounds beyond which the Justices should not go. The time has come for our elected representatives to blow the whistle.

Mr. DODD. Mr. President, as debate begins on the Omnibus Crime Control and Safe Streets Act of 1967, I have been questioned a number of times about the true public support for strong firearms legislation.

Admittedly, the questions were in the transparent disguise so frequently used by the gun lobby to generate the impression that public support is lacking for an honest Federal law that would at the least shut off the pipeline of firearms to criminals, both amateur and professional.

Some flacks of the firearms interests innocently print items questioning the need and the support for a law tough enough to cut down on the easy purchase of firearms by those most likely to misuse them.

Of course, some flacks lend themselves to this lobbying effort not so innocently.

For the benefit of my colleagues, and so that the RECORD will be correct as we begin the debate on S. 917, the Omnibus Crime Control and Safe Streets Act of 1967, I ask unanimous consent that the following newspaper editorials be printed in the RECORD.

These expressions of public support are from newspapers large and small, east and west, north and south. They are from States referred to as "hunting" States, those States often thought of as opposing strong firearms laws.

These expressions of public support approach the need for better laws from a number of different views, all valid, and legitimate and all germaine to the absolute need for Congress to act now and produce a law that will help States, counties, and cities enforce their own laws and ordinances by limiting the now virtually unrestricted traffic in mail-order firearms.

First, I should point out what the Bennington, Vt., Banner had to say last September 8 when FBI Director J. Edgar Hoover asked for firearms legislation that would make his massive task a little easier.

The Banner said:

A reasonable statement, when you think about it. If Congress fails to act on the present firearms control bill, it is conceivable—just conceivable—that the next time around it will have second thoughts and insert Hoover's registration suggestion too.

Mr. President, I ask that the entire editorial be printed at this point.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the Bennington (Vt.) Banner, Sept. 8, 1967]

ULTIMATUM FROM THE FBI

By almost anyone's standards, FBI Director J. Edgar Hoover would be considered a traditionalist, an officeholder less interested in breaking new ground than in relying upon the tried-and-true. While the Federal Bureau of Investigation seeks to keep up with the most modern techniques of crime control, it does so within the legal framework established by Congress. It is rightly less interested in promoting new laws than in enforcing existing ones.

Hence it is of some importance that the FBI diretcor is today speaking out more strongly than ever in favor of the federal gun-control legislation stalled in Congress. The unequivocal tone of Hoover's latest message, in the September FBI bulletin, suggests that this is one congressional battle that the bureau will not let go by default.

Director Hoover puts the FBI squarely behind the administration's much-worked-over measure designed to correct some of the salient weaknesses in present firearms controls. The bill would end mail-order gun sales to individuals (but not to stores); license all firearms manufacturers and dealers; regulate over-the-counter sales of firearms and restrict the importation of military surplus guns.

Declaring that the time for enacting these controls is now, Hoover writes: "Strong measures must be taken, and promptly, to protect the public."

As a policeman, and not a legislator, he leaves no room for political compromise on a bill that already has been modified and watered down endlessly. As a matter of fact, he would go a big step further than the administration proposes by requiring local registration of all weapons.

As the FBI director told a congressional committee: "You have to get a license for your dog; you have to get a license to drive a car; you have to get a license to go into business ventures. I see no great problem to the individual in requiring all guns to be registered if the owner has nothing to hide and if he is a law-abiding citizen."

A reasonable statement, when you think about it. If Congress fails to act on the present firearms-control bill, it is conceivable—just conceivable—that the next time around it will have second thoughts and insert Hoover's registration suggestion too.

Mr. DODD. Next, Mr. President, I would like my colleagues to consider what some small papers, papers closest to the people, feel about the proliferation of firearms in the home and in the hands of those who should really not have them.

For example, consider the comment of the Portsmouth, N.H., Herald on September 1, 1967:

No sensible person maintains that tightening up somewhat on the sale and possession of guns, notably banning the interstate mail order sales which now enable anyone at all to get his hands on a lethal weapon, would end incidents of the kind cited above. But such a law would tend to hamper the trigger-happy, and that's eminently worth doing.

Mr. President, I ask that the entire editorial of the Herald be printed at this point along with the equally strong views of the Middletown, Ohio, Journal and the Williston, N. Dak., Herald.

In each case the comments are well thought out, sensitive, and reflect what is clearly the over-riding sentiment of the bulk of the American public.

There being no objection, the editorials were ordered to be printed in the RECORD, as follows:

[From the Portsmouth (N.H.) Herald, Sept. 2, 1967]

CURBING THE TRIGGER-HAPPY

On one recent day, these incidents were in the news:

In Pittsburgh, a nine-year-old boy asleep with three other boys in a back yard was killed by a bullet. Police said it apparently came from a rifle fired by a young man to "scare away" a neighbor's dog.

In Miami, a motorist described as having "a kind of half smile on his face" raced through the city shooting a pistol at random from his car. Four truck drivers, a construction machine driver and an off-duty policeman were wounded.

In North Hollywood, Calif., a 23-year-old mother reportedly playing a hide-and-seek prank at a neighbor's home was shot and killed by a young man—a guest at the home—who picked up a loaded pistol from a nightstand and fired at what he thought was a prowler.

These incidents came on the heels of police seizure of an arsenal—scores of weapons ranging from a machete to an anti-tank gun—assembled by alleged members of right-wing organizations in New York. Not long before, there had been successive news stories about multiple killings with guns.

It cannot rationally be argued that tighter control legislation would have prevented all or indeed any of these tragic incidents. But a good case can be made for the contention that, had guns not been so readily accessible, some of them might not have occurred.

This is the rationale underlying the drive for stronger federal gun control law. No sensible person maintains that tightening up somewhat on sale and possession of guns, notably by banning interstate mail order sales which now enable anyone at all to get his hands on a lethal weapon, would end incidents of the kind cited above. But such a law would tend to hamper the trigger-happy, and that's eminently worth doing.

[From the Williston (N. Dak.) Herald, Apr. 1, 1968]

GUNS TO SPAWN SORROW, TROUBLE

A vague anxiety, compounded of fear of another long, hot summer of racial strife and the rising crime rate, has resulted in a 15 to 20 per cent increase in gun sales across the country, according to a Scripps-Howard Newspapers survey.

There is nothing new to this. The same phenomenon has been noted in every city after every riot. But never before have so many, ordinary, decent citizens, both white and Negro, been arming themselves in preparation for some sort of threat to their personal safety and that of their families.

Howeowners, housewives, businessmen, cab drivers, people who have never owned a gun and don't know how to handle one, are buying revolvers, pistols, rifles, shotguns and ammunition. Few states or municipalities have restrictions on sales or guns, and what laws exist are easily circumvented.

There are several tragic aspects to this situation.

Almost all the damage and loss of life in all of the riots has been suffered in the Negro areas of the cities. The few times that Negroes have "invaded" white neighborhoods, it has been in peaceful demonstrations, often met by abuse and violence or the threat of violence on the part of whites.

As for crime, this, too, is in great part a matter of Negro against Negro. The fact that law-abiding Negroes now feel they must arm themselves says more about the failure of the police to protect the ghetto dwellers from the criminals among them than it does about any plan to make war on the whites.

Ironically, the kind of crime that poses the real danger to America—the big-time, syndicated crime that syphons off billions of dollars a year out of the pockets of everyone, that corrupts government—does not seem to frighten people at all.

Even if all these guns are never used in a racial civil war—a prospect almost too terrible to contemplate—guns do have a way of going off.

How many newspaper stories will we read in years to come of little children finding forgotten guns hidden away in drawers and closets, with the all-too-familiar consequences?

How many people now buying guns will later have cause to regret that action for the rest of their lives?

[From the Middletown, (Ohio) Journal Mar. 29, 1968]

GUN DEATHS AT HOME

The role of the gun in fatal hunting accidents is well known. So is the dominant part guns play as the weapon in homicides. Some may be surprised to learn, however, that last year guns accounted for 1,600 fatalities in American homes. That was an increase of seven per cent over the previous year.

The figures come from the National Safety Council, which takes the occasion to offer some advice directed especially at parents. It is urged that greater efforts be made to keep firearms out of the hands of the untrained and the immature, and that more emphasis be placed on teaching and practicing gun safety. That is sound counsel in a society where scores of millions have guns in their homes.

The wisdom of the National Safety Council's advice on firearms is given further emphasis by the fact that gun purchases are on the rise, partly in reaction to talk of more urban violence. Those who possess firearms must recognize that with ownership goes responsibility. If that principle were generally accepted, and acted on as it ought to be, the number of gun fatalities in the home might be reduced.

Mr. DODD. Mr. President, the editorial opinion of another group of publishers generally addresses itself more directly to the problem of actually getting legislation out of the clutches of the firearms lobby and into law.

They are concerned about Congress dragging its feet while neighborhoods become shooting galleries. Their arguments are sensible, rational, and come from the heart of the American people.

Let me briefly quote just some of the observations of the hometown press across the Nation.

The Grand Junction, Colo., Sentinel began its editorial this way:

The gun lobby seems to have effectively killed any drive for reasonable firearms legislation in the near future. That success was gained in part by distorting the facts . . .

Now I don't agree that this Congress will kill that legislation, that it will fail to pass title IV of the Omnibus Crime Control and Safe Streets Act of 1967 but that is the impression the lobbies try to create. But in creating it at the Sentinel their distortions came through loud and clear.

The Chicago Daily News said:

It is past time for Congress to heed the wishes of the nation's majority and write meaningful new gun controls into the federal code.

The Dayton, Ohio, Journal-Herald said:

Our point is that, as Congress reconvenes after Easter recess, the will of the American public should now be determined and acted upon. The high pressure tactics of the National Rifle Association have prevailed for too long. It is time to act firmly to bring under some kind of reasonable discipline the virtual anarchy regarding gun sales, shipment and registration.

The San Diego, Calif., Union said:

No legitimate sportsman should be victim of tighter gun control. But if guns and known criminals can be kept apart, the hope for a reduction in violent crime is real.

The Dayton, Ohio, News said:

While Congressmen continue to spend much time and money to find out what legislation their constituents want, bills on firearms controls, overwhelmingly sought by the public are consistently denied. . . . This doesn't make sense . . . Congress has balked. It has bowed to the gun lobbies, particularly the National Rifle Association which passes off America's anti-firearm feeling as "hysterical in nature". . . . How long will it take a people deeply concerned about crime in their midst to move to control the principal weapon of the criminal: guns?

And, there are others, Mr. President, many others.

So that my colleagues better understand the mood of the public, the wishes of most—and I emphasize most—of the people back home, I ask these news items be spread on the RECORD at this point.

There being no objection, the news items were ordered to be printed in the RECORD, as follows:

[From the Rochester (N.Y.) Democrat & Chronicle, Apr. 11, 1968]

MORE GUN CONTROLS NEEDED

It's hard to understand the reluctance of the Senate to impose some controls on the sale of rifles and shotguns. The Judiciary Committee did add to the safe streets and crime control bill one amendment prohibiting the sale through the mails of pistols and other handguns. But it turned down an amendment to extend the same regulation to rifles and shotguns.

No one supposes that even the most stringent firearms controls could eliminate all risk of assassination, murder, or other criminal misuse of weapons. But surely it would reduce the risk.

The right to bear arms ought to be accompanied by obligation—the obligation of going through clearly-defined channels to purchase weapons. The virtually unregulated right to purchase rifles by mail is subject to too much abuse. As things stand now, too many people have too easy access to too many weapons. More restraints are badly needed.

[From the Asheville (N.C.) Citizen-Times, Apr. 9, 1968]

IS LIMITED GUN CONTROL NEARING?

After six years of periodic debate, the Senate Judiciary Committee has finally voted to ban the mail-order sale of hand-guns, though not rifles and shotguns. And, while that is a seeming inconsistency, it is clearly a sop to "sportsmen" groups who oppose any gun control whatever.

Presumably the solons reasoned that rifles and shotguns, because of their greater bulk, are less easy to conceal and are thus less likely to be sought by hoodlums, delinquents, and other potential killers. They discount the fact that such weapons are equally deadly.

Even so, the move banning mail-order pistol sales must be welcomed as a small step forward. Such sales have reached alarming proportions and the evidence indicates that many of the mail-order buyers are people who could not qualify for the purchase of a gun in their own communities.

The proposed ban is part of a comprehensive anti-crime bill that may not survive review by the full Senate once it clears the Judiciary Committee. But the mounting crime rate and events of recent days in many American cities, testify to the need.

[From the Rhinebeck (N.Y.) Gazette, Aug. 31, 1967]

GUNS IN THE NEWS

On one recent day, these incidents were in the news:

In Pittsburgh, a nine-year-old boy asleep with three other boys in a back yard was killed by a bullet. Police said it apparently came from a rifle fired by a young man to "scare away" a neighbor's dog.

In Miami, a motorist described as having "a kind, of half smile on his face" raced through the city shooting a pistol at random from his car. Four truck drivers, a construction machine driver and an off-duty policeman were wounded.

In North Hollywood, Calif., a 23-year-old mother reportedly playing a hide-and-seek prank at a neighbor's home was shot and killed by a young man—a guest at the home—who picked up a loaded pistol from a night-stand and fired at what he thought was a prowler.

These incidents came on the heels of police seizure of an arsenal—scores of weapons ranging from a machete to an anti-tank gun—assembled by alleged members of right wing organizations in New York. Not long before, there had been successive news stories about multiple killings with guns.

It cannot rationally be argued that tighter firearms control legislation would have prevented all or indeed any of these tragic occurrences. But a good case can be made for the contention that, had guns not been so readily accessible, some of the incidents might not have occurred.

This is the rationale underlying the drive for stronger federal gun control law. No sensible person maintains that tightening up somewhat on sale and possession of guns, notably by banning interstate mail order sales which now enable anyone at all to get his hands on a lethal weapon, would end incidents of the kind cited above. But such a law would tend to hamper the trigger-happy.

[From the Dayton (Ohio) News, Apr. 16, 1968]

HOW LONG UNTIL GUN CONTROLS?

While congressmen continue to spend much time and money to find out what legislation their constituents want, bills on firearm controls, overwhelmingly sought by the public, are consistently denied.

This doesn't make sense. Not in the light of the assassinations of President Kennedy and Dr. Martin Luther King, Jr. Not in the light of statistics that show that firearms account for more than 6,000 murders, 10,000 suicides and 2,500 accidental deaths a year.

National surveys and polls show that Americans definitely want tighter restrictions on gun ownerships. Most agree with President Johnson who earlier this year urged Congress to "stop the trade in mail order murder."

A Gallup poll last year showed that 70 per cent of the people surveyed wanted stricter laws for handguns; 61 per cent wanted stricter laws for rifles and shotguns; 75 per cent wanted to prohibit the mailing of guns; 85 per cent wanted handguns registered.

In the face of all this, Congress has balked. It has bowed to the gun lobbies, particularly the powerful National Rifle Association which passes off America's antifirearm feeling as "hysterical in nature."

"How many summers," asked the President, "will we leave law enforcement with the single alternative—return fire—to thousands of firearms in the hands of the lawless? . . . How long will it take a people deeply concerned about crime in their midst to move to control the principal weapon of the criminal: guns?"

Yes—how long?

[From the San Diego (Calif.) Union, Apr. 13, 1968]

GUNS AND THE CRIMINAL

The need for more comprehensive gun control to combat violent crime becomes daily more apparent. The alarming increase of 22 per cent in assaults with guns last year brought the total of 53,000 cases.

Statistics produced by Sen. Thomas J. Dodd, Democrat of Connecticut, as chairman of the subcommittee on juvenile crime, clearly indicate that more than two-thirds of all murders are committed by those with criminal records. Dodd seeks to withhold firearms from known criminals in an attempt to reduce the number of potential murder weapons.

No legitimate sportsman should be victim of tighter gun control. But if guns and known criminals can be kept apart, the hope for a reduction in violent crime is real.

For years the nation has been led to believe that most murders are committed on impulse, by those with an otherwise unblemished record.

But research now shows that the bulk of murders are committed by criminals already known to the police.

A survey of the District of Columbia shows that 80 per cent of the killers with guns had a prior criminal record, 60 per cent had been arrested previously for crimes of violence, and in 81 per cent of the cases the murderer and victim were known to each other. There is certainly impulse, too, in 86 per cent of cases—but a previous criminal record, also.

National figures are expected to bear out the Washington survey. Clearly the case for greater firearm control for known criminals is overwhelming. The Dodd amendment should be supported.

[From the Dayton (Ohio) Journal Herald, Apr. 16, 1968]

CURB THOSE GUNS!

Congressmen favoring adequate gun-control legislation think that now there may be grounds for hope.

For the first time in 30 years a congressional committee has approved a proposed limitation on the sale and shipment of weapons.

Nevertheless, in view of the violence that so often and so consistently involves guns in our nation—they're used in 60 per cent of all murders—we believe the Senate Judiciary committee action comes far too late and would accomplish far too little.

Under the amendment to the anticrime bill which the committee approved, only handguns would be placed under some restraint. Any fool could still send away for a rifle or shotgun. Further, there is no mention of registering any weapon whatsoever.

Sponsors believe that rifles and shotguns will be reinstated during senate floor action. We hope they're right. We're not optimistic.

Those opposed to federal legislation are notoriously impervious to any appeal for rational, sane gun regulation. The assassination of President Kennedy made no impression on them. It is at least reasonable to presume that neither will the murder of Martin Luther King.

They are a minority, nevertheless. As noted in this column last year, the Gallup Poll has found that 75 per cent of all those surveyed believe "a person should not be able to send away for a gun through the mail"; 73 per cent are for a law requiring the registration of shotguns and rifles; 85 per cent favor registering handguns.

Our point is that, as congress reconvenes after the Easter recess, the will of the American public should now be determined and acted upon. The high-pressure tactics of the National Rifle Association (NRA) have prevailed far to long. It is time to act firmly to bring under some kind of reasonable discipline the virtual anarchy regarding gun sales, shipment and registration.

[From the Chicago (Ill.) News, Apr. 29, 1968]

LET'S SPIKE THE SHOTGUNS

The Senate Judiciary Committee's refusal to ban mail-order sales of shotguns and rifles in a bill to tighten federal gun controls is a grave mistake. The evidence is clear that these weapons—no less lethal than the handguns covered by the measure—are being used more and more in street violence throughout the nation. And it is especially true here in Chicago, where young South Side hoodlums rely increasingly on shotguns to impose their reign of terror.

Chicago's gun-registration ordinance and the state law requiring the registration of gun owners will place formidable obstacles in the way of juveniles seeking to purchase arms. But the illegitimate traffic in guns may increase as a consequence. A federal prohibition of mail-order sales of guns of all descriptions is one way of slowing down this clandestine traffic. In the long run, only uniform state gun laws, reinforced by local ordinances and a stringent federal code, can cope effectively with the threat posed by the promiscuous flow of firearms.

Since that day is far off, Americans as a whole are entitled to whatever protection Congress can devise now. Most gun owners are law-abiding citizens and two out of every three of them favor strict federal controls, according to the latest Harris Survey on the subject. The minority who oppose strict controls suffer under a miconception fostered by the National Rifle Assn. and other members of the gun lobby that regulations of any kind somehow deprives them of a constitutional right.

What the Constitution says on this point is contained in Article II of the Bill of Rights: "A well-regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed." The right to bear arms is thus clearly spelled out only as it pertains to participation in a militia—the term then in use for what has today become the National Guard. The possession of arms under any other circumstances is a privilege—like driving an automobile—and it is subject to licensing and any other reasonable form of regulation that federal, state and local au-

thorities may prescribe in the public interest.

It is past time for Congress to heed the wishes of the nation's majority and write meaningful new gun controls into the federal code.

[From the Grand Junction (Colo.) Sentinel, Apr. 3, 1968]

FIREARMS LAWS

The gun lobby seems to have effectively killed any drive for reasonable firearms legislation in the near future. That success was gained, in part, by distorting facts.

One of the top arguments has been that "most murders are not committed by criminals." The argument has been backed by the statement that "Annual murder statistics show that more than half of the murders are commited on 'impulse' and the victim is a spouse, a member of the family or a friend."

The truth is that while most murders are "impulse" murders, the impulse comes, most frequently, to a criminal with a gun in his hand; a criminal who could not legally possess a gun if we had any sort of effective legislation regulating sale of guns.

The results of a study of 120 major cities now being tabulated by the Senate subcommittee studying the problem offer ample proof that the gun lobby has distorted facts.

The study proves that most of those who commit murder with a gun had already been identified by prior criminal records as persons who should not have access to firearms. They were demonstrably people most likely to use a firearm in a crime.

The "profile of a killer" for Washington, D.C., for instance, shows that from statistics gathered, the typical murderer in that city:

Is usually a man, 34 years old. He uses a handgun to kill his friend, his wife or his girl friend. He has been arrested previously six times, twice for serious crimes, including once for a crime of violence. The killing usually occurs after a fight on Saturday night after the victim and the killer have been drinking. And the killer uses a foreign-made handgun available in a nearby store or through the mail for about $14.

National statistics show that 80 per cent of all killers who used a gun had a prior criminal record; 78 per cent of all murderers had criminal records; the gun killer had an average of six prior arrests before his first murder, two for serious offenses; 60 per cent of gun killers had been arrested for a crime of violence before the murder indictment.

Mr. DODD. And, Mr. President, one more comment if I may. There are those who are characterized, or who fancy themselves as spokesmen for rural America. They argue, and slickly, that rural Americans would be "inconvenienced" by a stronger firearms law, that it would interfere with their "way of life."

Wittingly or otherwise, these self-styled spokesmen for rural America all too frequently sketch the farmer, the sportsman, the small-town resident as an unsophisticated boob who has neither knowledge, nor feeling, nor any sensitivity toward the problems of the Nation as a whole.

I do not agree. I never have and never will.

The Columbia, Mo., Tribune, quoting the Prairie Farmer, said:

Newspapers have suggested that rural people are the stumbling block in efforts to control indiscriminate use of firearms. The gun mystique, it is said, thrives in open spaces. But the overpowering sentiment in rural areas for the unrestricted ownership and use of guns is a myth. At least that is the case in Indiana and Illinois, according to a recent Prairie Farmer poll.

Mr. President, I ask that the full text of the Prairie Farmer's remarks be printed at this point.

There being no objection, the remarks were ordered to be printed in the RECORD, as follows:

[From the Columbia (Mo.) Tribune, May 19, 1967]

GUN MYTH

Prairie Farmer: Newspapers have suggested that rural people are the stumbling block in efforts to control indiscriminate use of firearms. The gun mystique, it is said thrives in the open spaces.

But the overpowering sentiment in rural areas for the unrestricted ownership and use of guns is a myth. At least that is the case in Indiana and Illinois, according to a recent Prairie Farmer poll.

In personal interviews farm people were asked "Do you feel that more stringent efforts should be made to control the possession and use of firearms by the public?" The consensus in both states was: Yes, 55 percent; No, 32 percent; and Undecided, 13 percent.

In the three years since the death of President Kennedy more than 50,000 Americans—10 times the Vietnam toll—have been gunned down by misfits, criminals, and of course, ordinary people who became careless. Too many fire a too-easily-available gun in anger and live to regret it....

An angry, emotional group insists that any gun-control bill is a sinister plot and conspiracy to deprive Americans of their constitutional right to bear arms.

This is nonsense. Those of us who are concerned about the mounting death toll from shooting merely want guns kept out of reach of juveniles, drug addicts, convicted criminals, and the mentally unbalanced. There is no need to deprive hunters and those who have a legitimate reason.

Rural areas are just as concerned about this problem as anyone else. They want action by Congress.

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. SPONG in the chair). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 708

Mr. HRUSKA. Mr. President, my proposed amendment No. 708 to S. 917 is an amendment in the nature of a substitute for title IV of the pending bill. I ask unanimous consent that, when that amendment is reprinted, the names of the following Senators be added as cosponsors: My colleague from Nebraska [Mr. CURTIS], the Senator from Arizona [Mr. FANNIN], the Senator from Texas [Mr. TOWER], and the Senator from Mississippi [Mr. EASTLAND].

The PRESIDING OFFICER. Without objection, it is so ordered.

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Hackney, one of its reading clerks, announced that the House had passed the joint resolution (S.J. Res. 131) to designate May 20, 1968, as "Charlotte, N.C., Day," with an amendment, in which it requested the concurrence of the Senate.

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

REPEAL OF CERTAIN ACTS RELATING TO CONTAINERS FOR FRUITS AND VEGETABLES, AND FOR OTHER PURPOSES

Mr. BYRD of West Virginia. Mr. President, I wish to read a statement on behalf of the distinguished junior Senator from North Carolina [Mr. JORDAN], as follows:

STATEMENT BY SENATOR JORDAN OF NORTH CAROLINA

On October 20, 1967, the Senate passed S. 2068, which would repeal the Standard Containers Acts of 1916 and 1928 and, in addition, certain acts relating to naval stores, wool, and exportation of tobacco plants and seed.

On March 11, 1968, the House of Representatives passed H.R. 13058, which would repeal the Standard Containers Act of 1916 and 1928, but would not affect the three other laws which would be repealed by S. 2068. The two bills are identical in substance insofar as they relate to the Standard Containers Acts, so that all of the substance of H.R. 13058 is contained in S. 2068 as that bill was passed by the Senate.

H.R. 13058 was referred to the Committee on Commerce, while S. 2068 was considered and reported by the Committee on Agriculture and Forestry.

Mr. BYRD of West Virginia. Mr. President, on behalf of the Senator from North Carolina [Mr. JORDAN], I ask unanimous consent that the Committee on Commerce be discharged from the further consideration of the bill (H.R. 13058) to repeal certain acts relating to containers for fruits and vegetables, and for other purposes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 13058, and that it be amended by striking out all after the enacting clause and inserting in lieu thereof the text of S. 2068, as passed by the Senate on October 20, 1967.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The clerk will state the amendment.

The legislative clerk read as follows:

(a) The Act of August 31, 1916, entitled "An Act to fix standards for climax baskets for grapes and other fruits and vegetables, and to fix standards for baskets and other containers for small fruits, berries, and vegetables, and for other purposes" (39 Stat. 673, as amended; 15 U.S.C. 251–256);

(b) The Act of May 21, 1928, entitled "An

Act to fix standards for hampers, round stave baskets, and splint baskets for fruits and vegetables, and for other purposes" (45 Stat. 685, as amended; 15 U.S.C. 257–257i);

(c) The Act of June 5, 1940, entitled "An Act to prohibit the exportation of tobacco seed and plants, except for experimental purposes" (54 Stat. 231; 7 U.S.C. 516–517);

(d) The Naval Stores Act approved March 3, 1923 (42 Stat. 1435; 7 U.S.C. 91–99);

(e) The Act of May 17, 1928, entitled "An Act to authorize the appropriation for use by the Secretary of Agriculture of certain funds for wool standards, and for other purposes" (45 Stat. 593; 7 U.S.C. 415b–415d).

SEC. 2. Section 10(b)(3) of the Act of November 3, 1966 (80 Stat. 1302; 15 U.S.C. 1459 (b)(3)), is amended to read as follows:

"(3) containers subject to the provisions of the Act of August 3, 1912 (37 Stat. 250, as amended; 15 U.S.C. 231–233), or the Act of March 4, 1915 (38 Stat. 1186, as amended; 15 U.S.C. 234–236)."

SEC. 3. This Act shall become effective sixty days after the date of its enactment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill (H.R. 13058) was read the third time and passed.

ORDER OF BUSINESS

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDRESS BY SENATOR MILLER

Mr. BYRD of West Virginia. Mr. President, on April 17, the distinguished Senator from Iowa [Mr. MILLER] gave the keynote address at the annual meeting of the Iowa Hospital Association in Des Moines.

Because of its timeliness, I ask unanimous consent that the address be printed in the RECORD.

There being no objection, the address was ordered to be printed in the RECORD, as follows:

ADDRESS BY JACK MILLER, U.S. SENATOR FROM IOWA

"The Iowa Hospital Association faces the future confident that it will continue to meet its goal of more effective and economical patient care through an expanding program of professional services and assistance to its members."

That statement, as you are aware, appears in one of your Association's brochures.

It is responsible and forward-looking. It recognizes that hospital patients need, and assures them they will receive, effective and economical professional services. At the same time, it reflects the number one problem facing your group today—the cost factor. In fact, this is a major problem of the entire health industry.

Over $30 billion a year is being spent on health care in the United States—over a half billion in Iowa alone. Such an expenditure amounts to 7 percent of the total amount spent on all personal needs. And these health care expenditures are growing at a far faster rate than our population growth rate.

The health industry is plagued by shortages of trained personnel, a lack of adequate facilities, and criticisms of the way it organizes and furnishes health care. Whether these criticisms are deserved or not, they still exist in the minds of many people.

But your most severe problem, and related in one way or another to the others, is sharply rising costs.

The Executive and Legislative branches of the federal government, state and local governments, and the insurance industry share your concern over this problem.

The concern reached the point where, in early March, the newly designated Secretary of Health, Education and Welfare, Wilbur Cohen, remarked that Congress will not stand indefinitely for rising costs under the Medicare and Medicaid programs, the two areas which apparently have generated the most concern of the Administration. Cohen said if a means isn't found to control costs, Congress "probably will take a meat-ax approach," which could mean ceilings on doctors' fees and daily hospital charges.

The concern has reached such a point that the President, in his Health Message to the Congress last month, implied that more federal involvement in your activities could well loom in the future.

It would have been constructive if these statements had been coupled with recognition of the fact that the "guns and butter economic philosophy has resulted in chronic budget deficits, worsening inflation, and abnormally high interest rates without which the problem of cost control would be relatively minor.

Although the key word in President Johnson's message appears to be "incentives," the federal intervention threat is there nonetheless.

He proposed that federal aid formulas be revised to provide incentives to hospitals which voluntarily curtail waste and duplication. He suggested that the same approach be applied to schools which do the best job of turning out graduates to meet the health manpower shortage. And he expressed his policy that governmental powers be used to set a reasonable range of reimbursing drug costs in such federally supported programs as medicare, medicaid, and maternal-and-child health care.

These are not new thoughts. They have been expressed before. Their feasibility will have to be evaluated on the basis of specific proposals rather than generalizations. Some way of providing high-quality health care more efficiently and at lower cost must be found, however, or the price tags resulting from the present spiral will surely exceed the reach of millions of citizens. Some of you may have seen the January 22 issue of U.S. News and World Report, which forecast a cost of $630 per day for a semi-private room in a hospital by the year 2,000 if inflation continues at the same pace as during the previous thirty years.

The best way is for those in control of our federal government to put its financial house in order, but there is little—outside of a few speeches—in the present Washington atmosphere to warrant confidence that this will be done.

The two old stand-by methods of showing concern—let's-study-it, and let's-get-together-and-talk-about-it—are no longer acceptable to those affected. Their patience has worn thin and they are demanding action.

The old methods are exemplified by the request of the President to former Secretary of Health, Education and Welfare John Gardner to study and submit a report on the problem. This was in August 1966. The report was completed and made public at the end of February 1967. As a follow-on, HEW called a national conference last June, and the findings of the conference were released this month. But already its findings are outdated, although they give a perspective to the conditions which exist today.

State insurance commissioners have had to face repeated requests from Blue Cross for rate increases to match rising costs, and many studies have been made at the State level in response to such requests. However, there has been no real alternative to allowing increases.

The Congress has, of course, had to concern itself with the cost problem in providing for the financing of the medicare and medicaid programs. Cost estimates for these programs have proved to be embarrassingly lower than the actual figures, necessitating a tax increase.

While health costs generally have been rising rapidly, hospital costs have risen even faster. The problem is so severe that the American Hospital Association has begun a public information program to explain to the public the reasons for the increases. This is most appropriate, for public attention on rising health costs tends to center on the hospitals, which are becoming more and more the focal point for all health care.

In the past three years, Congress, at the Administration's urging, has enacted nearly 30 new health measures. In doing so, it has added to the growing cost and manpower problems of the health industry.

In the last three years, the federal government's budget for health care has increased from $6 billion to nearly $14 billion annually, and this does not include the $2.5 billion budgeted for the care of service personnel and veterans.

Its expenditures on medical care for the elderly and the poor have gone up from $1 billion to nearly $8 billion.

Expenditures have risen from $2 billion to nearly $3 billion annually for construction of new laboratories, hospitals and health clinics and the training of the men and women to work in them.

Federal appropriations to prevent and control disease have risen from $450 million to nearly $700 million annually.

In the last three years, 19.5 million Americans 65 and over have been brought under medical care provisions of the federal laws.

And 30 million children have benefitted from federal funding for protection against diphtheria, polio, and other diseases.

Even though an additional 100,000 doctors, nurses, dentists, laboratory technicians and other health workers are being trained this year, the health industry still faces serious manpower shortages.

More than 850 medical, dental and nursing schools have enlarged their facilities or improved their programs, but the health industry still is confronted with the need for more.

Apparently resigned to inflationary policies, the President in his health message estimated that between 1965 and 1975 the cost of health care will increase by nearly 140 percent.

Average payments per person will double from $200 a year to $400 a year.

Drug payments will rise by 65 percent.

Dental bills will increase 100 percent.

Doctors' bills will climb 160 percent.

Payments for general hospital services will jump 250 percent.

The dimensions of the federal government involvement was clearly outlined by the President in that health message.

"Health expenditures in the United States," he said, "are now nearly $50 billion a year. The Federal Government pays $14 billion of that amount (with) $16 billion requested in fiscal 1969."

And he warned that "unless the cost spiral

is stopped, the Nation's health bill could reach a staggering $100 billion by 1975."

Nothing was said about the role of the federal government in promoting inflation which has brought on much of the cost spiral, and this seems to be the implication: Unless the health industry takes action on its own, the federal government will.

A year ago, the U.S. Department of Health, Education and Welfare reported that hospital costs rose 16 percent in 1966 compared with an average seven percent increase for the five previous years. This, of course, was the year Medicare first went into effect.

At the same time, the American Hospital Association forecast that hospital costs per patient day would increase by 18.6 percent in 1967.

However, the increase was not as great as expected and total hospital cost per patient day in 1967 amounted to $58.06—an increase of 15.4 percent over 1966.

A 17.4 percent increase in payroll costs, due to inclusion of hospital employees under federal wage laws, and higher salaries for nurses and other paramedical personnel were largely responsible, the American Hospital Association said.

Wages and salaries accounted for $36.30 of the $58.06 cost—up from $30.92 in 1966.

The AHA said 5,812 community hospitals incurred inpatient and outpatient expenses of $12.6 billion last year, up $2.1 billion from the 1966 figure.

The admission of patients 65 and over rose 5 percent in the last six months of 1967 over the corresponding period of 1966. (Medicare went into effect in the last six months of 1966.)

Hospitals, on the average, now employ 264 persons for each 100 patients, compared with a 148–100 ratio in 1946.

The key figure in the complex and troubling problem of spiraling hospital care costs is personnel costs. And, in turn, these have been aggravated by substantial increases in the cost of living due to inflation compounded by federal legislation which failed to gear eligibility tor health care to availability of personnel and facilities.

Doctors have experienced similar cost increases in their offices. The number of health workers for each physician in 1940 was five. Today it is 13 and will probably increase to 17 by 1970.

As medical technology advances and increases the quality of health care, more highly trained and highly paid personnel are required to bring that high quality of care to as many people as possible—both in the doctors' offices and in the hospitals.

And no one knows better than you the added costs of equipment needed to give patients the benefit of these advances in medical technology.

The 16 percent increase in hospital costs in 1966, compared with an average of seven percent per year for the previous five years, accompanied the first major breakthrough in hospital employee salaries in 20 years.

Hospital costs will probably continue to rise steeply for the next three to five years and then level off as hospital wages catch up to some degree to the wages paid in business and industry. The American Hospital Association projects a 25 percent increase in the average salary over the next two years.

Hospitals are what economists call "labor intensive" organizations. Two-thirds or more of their total costs are in payroll, and only one-third in materials, supplies and other expenses.

In business and industry it is exactly the reverse.

This results from two factors: One is that hospitals, unlike business and industry, require personal service by employees to patients, 24 hours a day every day of the year. The second is that these personal services cannot usually be automated at a lower cost, as so often is the case in manufacturing and mining industries, for example.

Until recently, industry generally was able to absorb the effect of wage increases through increased productivity. Better hospital management can improve hospital efficiency, but the opportunity for you to achieve increased productivity is much more limited.

What is on the federal horizon?

President Johnson in his health message to Congress proposed expanded programs for maternal and infant care and training of doctors, nurses and other health professions. He also asked for legislation to authorize the Government to use methods of payment under medicare, medicaid and maternal and child-health programs that would encourage reductions in the cost of care and to establish a "reasonable cost range" for reimbursement for drugs under these programs.

The President listed five "major new goals" which he proposed to achieve through a combination of new legislative, administrative and volunteer efforts. The goals were: to reduce the "inexcusably high rate of infant mortality"; to meet the urgent need for more doctors, nurses and other health workers; to deal with the "soaring costs" of medical care and assure the most efficient use of health resources; to reduce the "shocking toll" of deaths from accidents; and to "launch a nationwide effort to improve the health of all Americans."

The President proposed seven legislative proposals which included:

Asking Congress to authorize the Secretary of HEW to employ new methods of payment under medicare, medicaid, and maternal and child-health programs if they had been shown to be effective in maintaining quality of care while increasing efficiency and reducing costs. Under existing legislation, reimbursements are made on a "reasonable cost" basis, and in 1967 costs rose at a much higher rate than anticipated by the Administration. The President directed the Secretary of HEW to begin testing immediately a variety of proposed incentives to encourage hospitals and other providers of medical care to reduce their costs. Authority for experimenting with reimbursement for medical care under federal programs was contained in the 1967 Social Security Amendments Act.

Asking Congress to give HEW the authority to establish a "reasonable cost range" to government reimbursement for drugs currently provided under medicare, medicaid, and maternal and child-health programs. Under this proposal, physicians could prescribe more expensive drugs of the same quality and effectiveness (brand name drugs in most cases), but reimbursement would be limited to the cost range established by the Department.

Asking Congress to extend five training and research programs that are due to expire in June 1969. In a new proposal, he requested operating and project grants that would include incentives to medical schools and other health profession schools to expand their enrollments and to reduce the length of their training. Another proposal would provide federal assistance for training of nurses, paramedical personnel, administrators and public health workers. These programs have been embodied in an administration bill introduced the day after the President's message as the "Health Manpower Act of 1968."

Quite obviously the role of the federal government in the health care field will continue to grow. Certainly it has an obligation to the health professions which must care for the requirements generated by federal legislative programs. Certainly it has an obligation to many local communities faced with a shortage of doctors and hospital facilities caused by these programs. For example, more appropriations for the Hill-Burton program would seem to rate a higher priority at this time than some of the other so-called "Great Society" programs.

Above all, the federal government has an obligation to provide for adequate reimbursement to those called upon to extend service to patients covered by federal programs—especially Medicare and Medicaid. Just because costs of these programs have gone up far beyond the Administration's estimates is no reason why our hospitals should be told to sacrifice their income to hold down the cost. And this is especially true when the federal government has directed hospitals to pay higher wages under its wage laws and is responsible for causing the inflation which has been wrecking your budgets.

For this reason, I offered an amendment to the Social Security bill last fall, worked up in consultation with representatives of both your organization and the national, which would have allowed use of a "per diem" basis for reimbursement. It would have done away with the terribly complicated cost accounting to which you have been subjected; and it would have had an incentive feature under a provision that "in determining a per diem basis for cost of services there shall be taken into account the per diem costs prevailing in a community for comparable quality and levels of services." The Senate approved this amendment, but due to Administration pressure, it was taken out by the Conference Committee. The Administration's position was that they wanted to have the statistical data on costs for an 18-month period (from July 1, 1966 through December 31, 1967) on the basis of which to reach a scientific determination on the present reimbursement formula's shortcomings and needs for improvement. They expect to have these data assembled by June or July, and you can be quite sure that my office will be following up to see what the findings are and what changes can be made.

In conclusion, I would emphasize that although the increased role of the federal government in the health care field has been dramatic, most of the burden of meeting the nation's needs for health profession manpower and medical care facilities is going to be borne by the states, local communities, and non-governmental institutions and organizations. This is in the tradition of our system of government, and I am most confident that the Iowa Hospital Association will carry its share of that burden ably and compassionately.

ADJOURNMENT

Mr. BYRD of West Virginia. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until 12 noon tomorrow.

The motion was agreed to; and (at 4 o'clock and 58 minutes p.m.) the Senate adjourned until tomorrow, Friday, May 3, 1968, at 12 noon.

NOMINATIONS

Executive nominations received by the Senate May 2, 1968:

COUNCIL OF ECONOMIC ADVISERS

Warren L. Smith, of Michigan, to be a member of the Council of Economic Advisers, vice James S. Duesenberry.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Alice M. Rivlin, of the District of Columbia, to be an Assistant Secretary of Health, Education, and Welfare, vice William Gorham.